Supreme Court, U.S.
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No. 02 356

In The

# Supreme Court of the United States

DALE H. CHU,

*Petitioner,*

v.

STATE OF WISCONSIN,

*Respondent.*

**On Petition For A Writ Of Certiorari To The Supreme Court Of Wisconsin**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

Does the Fourteenth Amendment to the United States Constitution prohibit states from using racial and cultural stereotypes as evidence to prove motive in criminal trial proceedings?

## PARTIES

The petitioner is Dale H. Chu, an individual convicted of as a party to a crime, of committing arson of both a building and property with the intent to defraud an insurer, contrary to Wis. Stats. §§ 943.02(1)(b), 934.04 and 939.05, in a trial by a jury of twelve persons who were introduced to Korean racial stereotypes as a basis upon which to form their decision, at issue here. The respondent is the State of Wisconsin.

TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTION PRESENTED | i |
| PARTIES | ii |
| TABLE OF CONTENTS | iii |
| TABLE OF AUTHORITIES | v |
| OPINIONS BELOW | 1 |
| JURISDICTION OF THIS COURT | 1 |
| CONSTITUTIONAL PROVISIONS INVOLVED | 1 |
| STATEMENT OF THE CASE AND FACTS | 2 |
| REASONS FOR GRANTING THE WRIT | 15 |
| I. THE FOURTEENTH AMENDMENT IS UNDERMINED WHEN RACIAL AND CULTURAL STEREOTYPES ARE USED AS EVIDENCE TO PROVE MOTIVE IN CRIMINAL PROCEEDINGS | 15 |
| II. USING RACE AND CULTURE TO PROVE MOTIVE IN CRIMINAL PROCEEDINGS DESTROYS THE FUNDAMENTAL VALUES OF OUR TRIAL SYSTEM | 18 |
| A. The State Injected Inaccurate Korean Stereotypes Suggesting That Korean Sons Are Automatons Who Blindly Carry Out The Order Of Their Fathers Even When The Orders Involve Criminal Activity, Inviting The Jury To Make "Quick And Easy Decisions," Producing A Negative Impact On Dale Chu | 18 |

TABLE OF CONTENTS – Continued

Page

B. The State's Use Of Inaccurate Korean Stereotypes Resulted In An Unjust Conviction Where The Evidence Does Not Support That A Crime Was Even Committed ..... 23

III. THE STATE SHOULD NOT BE GIVEN THE GREEN LIGHT TO USE RACE AND CULTURE AS EVIDENCE TO PROVE MOTIVE IN A CRIMINAL PROCEEDING BECAUSE IT BLATANTLY VIOLATES THE CONSTITUTIONAL GUARANTIES OF THE FOURTEENTH AMENDMENT ..... 26

CONCLUSION ..... 30

# TABLE OF AUTHORITIES

Page

## CASES CITED

*Aliwoli v. Carter,* 225 F.3d 826 (7th Cir. 2000) .....27, 28

*Batson v. Kentucky,* 476 U.S. 79 (1986) .....17

*Chapman v. California,* 386 U.S. 18 (1967) .....24

*Hirabayashi v. United States,* 320 U.S. 81 (1943).....26

*Korematsu v. United States,* 584 F. Supp 1406 (1984) .....26, 29, 30

*Kyles v. Whitley,* 514 U.S. 419 (1995) .....25

*McClesky v. Kemp,* 481 U.S. 279 (1987) .....17, 24, 27

*Ristaino v. Ross,* 424 U.S. 589 (1976).....24

*State v. Chu,* 643 N.W.2d 878 (Wis. App. 2002).....*passim*

*State v. Vue,* 606 N.W.2d 719 (Minn.App. 2000).....27

*Yick Wo v. Hopkins,* 118 U.S. 356 (1886) .....18

*United States v. Doe,* 903 F.2d 16 (D.C. Cir. 1990).....17, 23, 24, 25, 26

*United States v. Richardson,* 161 F.3d 728 (D.C. 1998).....24

*United States v. Vue,* 13 F.3d 1206 (8th Cir. 1994).....26

## CONSTITUTIONS CITED

U.S. Const. Amend. XIV .....1, 16, 18

## STATUTES CITED

### FEDERAL

28 U.S.C. § 1257(a) ..... 1

TABLE OF AUTHORITIES – Continued

Page

STATE

Wis. Stats. § 809.15(3) ..... 15

Wis. Stats. § 809.30(2)(i) ..... 14

Wis. Stats. § 934.04 ..... 5

Wis. Stats. § 946.32(1)(a) ..... 11

Wis. Stats. § 939.05 ..... 5

Wis. Stats. § 943.02(1)(b) ..... 5

OTHER AUTHORITIES

Keith Aoki, *"Foreignness" & Asian American Identities: Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes*, 4 UCLA Asian Pacific American Law Journal 1, 37 (1996) ..... 20

## OPINIONS BELOW

On June 11, 2002, the Wisconsin Supreme Court declined to review the court of appeals' decision. (App. 23). The opinion of the court of appeals (App. 1) is published and decided on March 26, 2002, *State v. Chu,* 643 N.W.2d 878 (Wis. App. 2002).

## JURISDICTION OF THIS COURT

Dale H. Chu seeks review of a final decision of the Wisconsin Supreme Court, rendered on June 11, 2002. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

## CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment 14, Section 1:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE AND FACTS[1]

So Man Chu had a large dry cleaning business with several stores.[2] Over several years, So Man Chu, a tailor, had purchased a large number of new, but outdated, wedding and formal gowns from wedding boutiques for discount prices.[3] A wedding boutique owner provided receipts to investigators to prove she sold So Man Chu hundreds of dresses.[4] So Man Chu's plan was to refashion these dresses and sell them in a wedding boutique he would create at his dry cleaning business at 304 West Wisconsin Avenue, Appleton,[5] Wisconsin.[6] Accordingly, So Man Chu followed the recommended advice from his business accountant, Dennis Steffens, to increase his insurance coverage.[7] Although So Man Chu had business

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[1] This case is fact-intensive, as reflected in the factual portion of the decision, *State v. Dale Chu*, 643 N.W.2d 878 (Wis. App. 2002). Petitioner's legal position is that the Court of Appeals' decision omitted material facts necessary to understand the context in which racial stereotyping took place. These material facts are included in this Petition.

[2] R. 74 at 306.

[3] R. 74 at 22, 24, 153, 339 and R. 75 at 25.

[4] R. 74 at 24-25.

[5] According to Federal Government statistics, there were 3,595 Asian persons (2.2%) and 151,101 White persons (93.9%) in Outagamie County, in which the City of Appleton is located, in the year 2000. In 2001, the State of Wisconsin has an estimated 88,763 (1.7%) Asian persons out of an estimated population of 5,401,906 in 2001. The United States has an estimated population of 10,242,998 Asian persons (2000 statistic) out of an estimated population of 284,796,887 (2001 statistic). See Fed. Stats' web site, www.fedstats.gov.

[6] R. 74 at 22 and R. 75 at 25.

[7] R. 61 at 3.

debt, his financial position had been strong enough to secure a large business loan from a bank.[8]

On January 4, 1998, So Man Chu, his teenage sons, defendant-appellant Dale Chu (hereinafter "Dale") and Jay Chu (hereinafter "Jay"), his teenage nephew, Suk Won Chung (hereinafter "Suk"), and their teenage friends, Mark Nelson (hereinafter "Mark") and Steve Romenesko (hereinafter "Steve"), all helped at the dry cleaning business.[9] Earlier that day, Dale and Suk had used the delivery van to make deliveries of clothes to other stores for Monday's customers.[10] Dale and Suk were also supposed to replace a fire extinguisher at a certain store with an extinguisher in the delivery van.[11] Later, in preparation for painting a room at the business, the boys moved customers' clothes into delivery vans parked outside the building in order to prevent paint fumes from permeating the clean clothes, and moved the wedding and formal gowns to the back room to avoid paint.[12] At trial, Mark testified that he saw about 400 dresses at the building that day.[13]

At about 7:00 p.m., So Man Chu dropped Mark off at his house.[14] Upon arrival at So Man Chu's house, the boys realized that they had forgotten to exchange the fire

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[8] R. 73 at 147-48.

[9] R. 74 at 152, 155, and 296.

[10] R. 74 at 153.

[11] R. 74 at 21.

[12] R. 74 at 153.

[13] R. 74 at 312.

[14] R. 74 at 155 and 296.

extinguishers and Suk forgot his wallet.[15] Dale, Jay, Steve, and Suk, then returned in Dale's car with music blaring to get a fire extinguisher from the delivery van parked behind the building.[16] No one entered the building.[17] After Suk retrieved the extinguisher and his wallet from the van, they took it to the other store, exchanged it, spent some time looking for a specific video game magazine at different stores, dropped off Suk, before finally returning to the building to place the exchanged fire extinguisher into the parked delivery van.[18]

At approximately 8:30 p.m., a fire was reported at the dry cleaning business.[19] That night, neighbors Belinda and Jeffrey VanDeLeygraaf gave written statements that upon hearing loud music, they saw four boys stop by the building at about 8:00 p.m.[20] With the facts still fresh in their minds, neither Belinda nor Jeffrey stated they saw anyone entering or exiting the building.[21] Dale, Jay, and Steve arrived at the site of the fire shortly after the firemen arrived, and gave written and signed statements after being interviewed separately by police.[22]

Although a window was found open on the building, investigators knew that the windows of the building were regularly opened to relieve employees of the excessive heat

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[15] R. 74 at 156.

[16] R. 74 at 156.

[17] R. 74 at 156-157, 259-260, 343-344, and 380-381.

[18] R. 74 at 157, 160-164.

[19] R. 2.

[20] R. 72 at 137.

[21] R. 72 at 113-115.

[22] R.72 at 106.

from the dry cleaning business. At trial, Officer Randy Cook testified that Mrs. Sun Hee Chu stated that she had accidentally left the window open that day, so Cook testified, "that open window no longer became an issue."[23]

From November, 1998 through July, 1999, a secret John Doe proceeding (Case No. 98 JD 8) took place before Judge Dee Dyer.[24] Judge Dyer made a finding of probable cause that Dale Chu committed the crime of party to a crime, of committing arson of both a building and property with the intent to defraud an insurer, contrary to Wis. Stats. §§ 943.02(1)(b), 934.04 and 939.05 and issued a criminal warrant,[25] despite the cause of the fire being officially classified as "undetermined with suspicion."[26]

On December 10, 1999, the criminal complaint against Dale Chu was filed.[27] The criminal complaint stated that "Reece reported . . . the fire at 304 West Wisconsin Avenue on the evening of January 4, 1998 was an arson fire,"[28] which contradicted the fire's official classification of "undetermined with suspicion."[29] Only Dale Chu was charged, despite Jay, Steve, and Suk also returning to the store to replace the fire extinguisher.[30]

On December 30, 1999, at the preliminary hearing, State witness Joann Weiss (hereinafter "Weiss") testified

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[23] R. 74 at 18-19.

[24] R. 2.

[25] R. 1 at 1.

[26] R. 70, Exhibit 8.

[27] R. 2.

[28] R. 2 at 2.

[29] R. 70, Exhibit 8.

[30] R. 2.

that Dale Chu told her that Dale, Jay, Steve, and Suk, were the four boys who returned to the building on the night of the fire.[31] Weiss further testified that Dale did not tell her any details about how the fire was started.[32]

One of the witnesses the State lined up to testify at Dale Chu's trial was Nicholas Wales (hereinafter "Wales").[33] Wales, however, had legal troubles of his own. On June 30, 2000, at a hearing for *State v. Nicholas Wales*, Case Nos. 99CM1057 and 00CM0763, Attorney (now Commissioner) Brian Figy (hereinafter "Figy") told Judge Dee Dyer that for "ethical reasons" he had "no choice" but to file an affidavit of Nicholas Wales.[34] According to the affidavit, Wales, when initially questioned by Sergeant Randy Cook (hereinafter "Cook") and later by State Investigator Steve Malchow (hereinafter "Malchow"), denied having any knowledge to suggest that Dale Chu was involved with the fire.[35] Despite Wales' lack of information, Wales' affidavit states Malchow told Wales he could get rid of Wales' pending court cases and get a warrant for Wales' arrest quashed if Wales cooperated in the Dale Chu investigation.[36] Wales' affidavit states that Malchow told Wales to make up a story about how the warrant got quashed, not to tell Figy about their deal, and to lie on the witness stand if asked about Malchow's favors.[37]

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[31] R. 71 at 20.

[32] R. 71 at 25.

[33] R. 73 at 268-269.

[34] R. 57.

[35] R. 68 at Exhibit 70.

[36] R. 68 at Exhibit 70.

[37] R. 68 at Exhibit 70.

The order to quash the warrant for Wales' arrest specifically mentioning Malchow and signed by Judge Dyer on March 31, 2000 validates Wales' June 28, 2000 affidavit.[38]

On July 20, 2000, Wales confirmed portions of his June 28, 2000 affidavit to Sergeant Cook stating that Figy had uncovered his made-up story about the quashed warrant and Malchow's involvement in quashing the warrant.[39] However, when Cook pressed Wales to tell the "truth" about the affidavit, eventually Wales said that he did not remember, and finally he told Cook that the affidavit was a forgery.[40] When Wales was asked by Sergeant Cary Meyer (hereinafter "Meyer") for a possible motive for forgery, Wales said Figy thought the D.A.'s office was a "bunch of crooked bastards" out to get everybody.[41] On July 21, 2000, State Investigator Mark Moderson (hereinafter "Moderson") obtained an Affidavit of Forgery, where Wales claimed the June 28, 2000 affidavit was forged.[42]

On August 31, 2000, Wales told State Investigator Moderson he had lied about the June 28, 2000 affidavit being forged.[43] Later that day, Wales told Sergeant Meyer that he lied because he thought the District Attorney's office would be more willing to work with him and provide

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[38] R. 57.

[39] R. 70 at Exhibit 2.

[40] R. 70 at Exhibit 2.

[41] R. 70 at Exhibit 2.

[42] R. 70 at Exhibit 2.

[43] R. 70 at Exhibit 2.

him a better chance of getting out of jail.[44] Sergeant Meyer warned Wales he would be completing a report and referring it to the District Attorney's office regarding a charge of obstructing a police investigation.[45]

On September 14, 2000, District Attorney Vincent Biskupic sent a letter to Wales' new attorney, Robert Sisson, claiming truthfulness and cooperation by Wales:

> Mr. Wales has been cooperating with Sergeant Cook since January 2000, and has expressed his desire to continue to cooperate and give truthful information regarding his knowledge of participants in that arson case.[46]

This letter with its false portrayal of Wales was introduced to the jury at Dale Chu's trial.[47]

Also on September 14, 2000, just five days before trial, Deputy Fire Chief Eugene Reece officially changed the fire's classification from "undetermined with suspicion," which had always been the official classification up to this date, to the classification of "incendiary."[48]

On September 19, 2000, the jury trial of Dale Chu began. During trial, Joann Weiss testified that Dale told her that the four boys who returned to the building were Dale, Jay, Steve, and Mark[49] and now claimed that Dale told her that chemicals for spot and stain remover were used, a piece of machinery was turned on, and wedding

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[44] R. 70 at Exhibit 2.

[45] R. 70 at Exhibit 2.

[46] R. 70 at Exhibit 3.

[47] R. 70 at Exhibit 3.

[48] R. 70 at Exhibit 7.

[49] R. 73 at 210.

gowns were covered and placed near the fire[50] contradicting her preliminary hearing testimony. Joseph Deeg and Sonya Cross both testified that Weiss told them that she either had to testify against Dale Chu or she would go to jail.[51]

During trial, the State's experts and lay witnesses all gave directly contradictory explanations about how the fire started, none of which could be confirmed by physical evidence from the fire site. Eugene Reece, a State fire expert, testified that natural combustibles were used to start the fire.[52] In stark contradiction, Daniel Hughes, a State arson expert, testified that the dresses were doused with something and lit with a match.[53] However, Hughes testified that there was no physical evidence that flammable liquid was used.[54] Weiss testified that chemicals for spot/stain removers were used and a press machine was turned on.[55] However, Hughes testified that fire resulting from igniting chemicals on the premise somewhere near a press machine left on would be "inconsistent with known physical facts."[56] Wales testified that a rag was put in a can of paint thinner or ether paint and lit.[57] However, Hughes testified that there was no physical evidence that

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[50] R. 73 at 212 and 221.

[51] R. 75 at 35 and 43.

[52] R. 73 at 107.

[53] R. 73 at 245.

[54] R. 73 at 253.

[55] R. 73 at 212 and 221.

[56] R. 73 at 249.

[57] R. 73 at 279 and 292.

flammable liquid was used[58] and Reece testified that there was no evidence of any cans being located near the origin of fire.[59]

Wales testified that Mark Nelson was the person from whom Wales obtained the specific details of how the fire was started.[60] However, Mark was dropped off at his home earlier that evening and never returned back to the building as Wales claimed.[61] Indeed, Sergeant Cook directly contradicted both Weiss' and Wales' trial testimonies when he testified the four boys who returned to the building the night of the fire were Dale, Jay, Steve, and Suk.[62]

During trial, the VanDeLegraafs now both testified that they could no longer reliably recall what they witnessed on the night of the fire.[63] Jeffrey VanDeLegraaf even testified that a portion of his written statement for police was based merely upon assumptions and not on what he actually saw.[64] Contrary to Jeffrey and Belinda's statements on the night of the fire which did not mention any exiting or entering the building while the facts were still fresh in their minds,[65] both claimed at trial that on the dark evening of the fire during an ice storm[66] from a

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[58] R. 73 at 253.

[59] R. 73 at 113.

[60] R. 73 at 269.

[61] R. 74 at 155 and 296.

[62] R. 74 at 100.

[63] R. 72 at 138 and 174.

[64] R. 72 at 174.

[65] R. 72 at 113-15.

[66] R. 72 at 178.

distance[67] they both saw an Asian person that they could not positively identify[68] come out of the building.

In the opening argument, the District Attorney told the jury that the Korean culture was "evidence" supporting its arson case against Dale Chu.[69] In the closing argument, the District Attorney told the jury that Dale Chu was faced with a Korean "test of loyalty" which put such a "tremendous bond" on Chu that he was forced to "carry out that mission" of arson.[70] Contrary to Dale Chu's legal position, defense attorney, William Grogan (hereinafter "Grogan"), told the jury that, "it is a textbook case of arson."[71] Grogan further told the jury, " . . . do we condemn a son for the sins of the father, if indeed what the father has done are sins or some type of wrongdoing?"[72] The jury found Dale Chu guilty of both counts.[73]

On September 29, 2000, just 7 days after Dale Chu's conviction, the State charged Wales for false swearing, contrary to Wis. Stats. § 946.32(1)(a), concerning the information Wales provided in the investigation of Dale Chu. *State v. Wales*, Case No.: 00 CF 632.[74]

On December 8, 2000, Attorney William Grogan was granted his motion to withdraw[75] and Attorney Andrew

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[67] R. 72 at 134.

[68] R. 72 at 153 and 175.

[69] R. 72 at 77.

[70] R. 75 at 152-153.

[71] R. 75 at 158.

[72] R. 75 at 159.

[73] R. 29; R. 30.

[74] R. 57.

[75] R. 37.

Shaw (hereinafter "Shaw") filed a formal notice of retainer.[76] Attorney Grogan gave Shaw an incomplete file of Dale Chu's case. Shaw asked the District Attorney's office in several letters for a set of the discovery given to defense.[77] Shaw was given a set of discovery from the District Attorney's office on January 12, 2001, which was missing certain exculpatory documents concerning Wales and Weiss.[78] Shaw wrote a letter on January 15, 2001, to the District Attorney stating, *"I need a copy of all discovery not previously received from your office on January 12, 2001."* (underlined in original letter).[79] When Shaw picked up this second set of discovery from the District Attorney's office, it did not contain the missing exculpatory documents.

Attorney Shaw's independent consultant, Ira Robins, discovered the State did not disclose that Weiss had been criminally charged with obstructing an officer in *State v. Joann Weiss,* Outagamie County Court Case No. 97CM1688, which involved Weiss telling minors to lie to police officers, and Weiss herself lying to a police officer.[80] The State also had not disclosed the case of *Town of Grand Chute v. Joann Weiss*, Citation No. G91711 (five counts of procuring alcohol to minors).[81] Further, the State had not disclosed the fact that Weiss was a police informant for the Appleton and Grand Chute police departments.[82] The

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[76] R. 38.

[77] R. 29B; R. 39A; and R. 48C.

[78] R. 48C.

[79] R. 48C.

[80] R. 57.

[81] R. 57.

[82] R. 57.

investigation of Dale Chu's case took place during the time period of Weiss' deferred prosecution agreement in *State v. Joann Weiss*, that was filed on October 29, 1998.[83] Further, Weiss allowed her son to have an underage drinking party on October 30, 1998, during the time period of Weiss' deferred prosecution agreement.[84] The case of *State v. Joann Weiss*, was dismissed by Judge Dee Dyer on January 19, 1999.[85] Four people provided affidavits that Weiss allowed her son to have an underage drinking party for his seventeenth birthday on October 30, 1998 at her house,[86] during the time period of Weiss' deferred prosecution agreement, which is a direct violation of the deferred prosecution agreement.[87]

On February 5, 2001, sentencing took place.[88]

In April 2001, Attorney Shaw retained Dr. Yueh-Ting Lee, a racial stereotype expert, who provided a report concerning the District Attorney's and State witness Joann Weiss' use of "old" and "inaccurate" racial stereotypes during trial.[89] Shaw also retained John Agosti, a certified arson investigator, who provided an affidavit explaining significant problems of the fire investigation and reasons

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[83] R. 57.

[84] R. 57.

[85] R. 57.

[86] R. 41 at Exhibits E-H.

[87] R. 57.

[88] R. 76.

[89] R. 50.

why the fire did not evidence a crime.[90] On May 4, 2001, Dale Chu passed a polygraph test.[91]

On May 9 and 10, 2001, Attorney Shaw was given Offense Report #00-092-439, pages 1-12, not previously given by Attorney Grogan or the State, from Public Defender Investigator Steve Faulks.[92] This offense report detailed Wales' numerous lies to police and State investigators concerning Wales' claim of forgery, its details, and motive.[93] The report confirmed that Wales had personally told State Investigator Moderson that he lied about the forgery, contradicting the allegations in the September 29, 2000 criminal complaint against Wales for false swearing.[94]

On June 11, 2001, Judge Dee Dyer ruled that all issues for the post-verdict motions except ineffective assistance of counsel were automatically denied pursuant to Wis. Stats. § 809.30(2)(i), but were preserved for appeal purposes. (R. 78-3) Judge Dyer denied defense's post-verdict motion concerning ineffective assistance of counsel.[95]

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[90] R. 50.

[91] R. 50. Polygraph examiner Robert Brochhausen determined that Dale Chu passed his polygraph test to these questions: Q: Did you set the fire at your dad's store? A: No.; and, Q: Do you remember telling anyone that you set the fire? A: No.

[92] R. 57.

[93] R. 70 at Exhibit 2.

[94] R. 70 at Exhibit 2.

[95] R. 78 at 195-200.

On September 14, 2001, the motion to supplement the trial record pursuant to Wis. Stats. § 809.15(3) was heard.[96] Shaw argued for a certified copy of the discovery from the State to be put in the appeal record, at defense's expense, to make clear what discovery the State had given the previous attorney, Grogan.[97] The State opposed the motion.[98] Judge Dee Dyer denied the motion.[99]

On March 26, 2002, the Wisconsin Court of Appeals affirmed the trial court's decision, holding that it was not improper for the prosecutor to use the Korean culture to show motive that a crime was committed. The decision was published as *State v. Dale Chu*, 643 N.W.2d 878 (Wis. App. 2002).

On June 11, 2002, the Wisconsin Supreme Court declined to review the court of appeals decision.

## REASONS FOR GRANTING THE WRIT

### I. THE FOURTEENTH AMENDMENT IS UNDERMINED WHEN RACIAL AND CULTURAL STEREOTYPES ARE USED AS EVIDENCE TO PROVE MOTIVE IN CRIMINAL PROCEEDINGS.

The Preamble to the United States Constitution sets the vision for its Citizens:

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[96] R. 85.

[97] R. 85.

[98] R. 85.

[99] R. 85.

> We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

The Fourteenth Amendment further upholds this vision by insuring that no matter what an American citizen's race, religion, or culture, that they will be treated as 100% American with the same constitutional rights and protections as all other Americans:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (United States Constitution, Amendment 14, Section 1.)

For many Americans with different ethnic backgrounds and cultures, the Fourteenth Amendment is the heart of the Constitution and the reason why they are proud to be American. Each morning Americans walk out their doors relying on Fourteenth Amendment guarantees that they will not be jailed merely because of their ethnic backgrounds and cultures.

At issue is the current Wisconsin case law, *State v. Chu,* 643 N.W.2d 878 (Wis.App. 2002), that undermines these most basic concepts of liberty and justice for all

Americans. The Wisconsin Court of Appeals held that it was not *improper*[100] for the State to use Korean culture as evidence to prove motive that a crime was committed. In essence, this law presupposes that people have inherent motive for committing crimes that have not yet been committed merely because of their race and culture.

The case of *State v. Chu* now stands directly contrary to this Court's rulings about the unconstitutionality of race-conscious arguments. The United States Constitution prohibits a prosecutor from making race-conscious arguments since it draws the jury's attention to a characteristic that the Constitution generally demands that the jury ignore. *McClesky v. Kemp*, 481 U.S. 279 (1987). Because of the risk that the factor of race may enter the criminal justice process, we have engaged in "unceasing efforts" to eradicate racial prejudice from our criminal justice system. *Batson v. Kentucky*, 476 U.S. 79, 85 (1986).

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[100] The Court's specific words are "not improper." *Chu* at 884. However, given the context of the decision, "not improper," in effect, has the same meaning as the word "proper." As explained in *United States v. Doe*, while there are cases (cited within the *Doe* opinion) with racial comments in which the comments have been held to be harmless error, "*in each instance, they were condemned.*" 903 F.2d 16, 26 f.n. 64. In the *Chu* decision, there is not one word of condemnation for the district attorney's use of old and inaccurate Korean stereotypes or the fictionalized Korean "test of loyalty." Further, the *Chu* court did not even find harmless error.

## II. USING RACE AND CULTURE TO PROVE MOTIVE IN CRIMINAL PROCEEDINGS DESTROYS THE FUNDAMENTAL VALUES OF OUR TRIAL SYSTEM.

The Fourteenth Amendment of our Constitution and the fundamental values of our trial system require that persons be tried for the acts they commit, not because of race and culture. More than a century ago, the Supreme Court vacated a conviction of a Chinese laundryman based upon these principles:

> [T]hough the law itself be fair on its face and impartial in appearances, yet it is applied and administered by public authority with an evil eye and unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886).

These constitutional guarantees must stand firm and must be applied fairly to all Americans.

### A. The State Injected Inaccurate Korean Stereotypes Suggesting That Korean Sons Are Automatons Who Blindly Carry Out The Order Of Their Fathers Even When The Orders Involve Criminal Activity, Inviting The Jury To Make "Quick And Easy Decisions," Producing A Negative Impact On Dale Chu.

The State has admitted in its appellate brief to using racial stereotypes during Dale Chu's trial, but argued that

they "were not *improper* racial stereotypes."[101] Unlike cases in which subtle stereotyping is hard to pinpoint and analyze, the prosecutorial remarks blatantly used inaccurate Korean stereotypes and a fictitious Korean "test of loyalty" to argue to the jury that Korean sons are automatons who blindly carry out the order of their fathers even when the orders involve criminal activity.

Starting with the opening argument, the State argued to the jury that Dale Chu's Korean culture was "evidence" that Dale Chu committed arson:

> The evidence will show in fact as part of family setup, and more particularly, because of nis Korean culture, [Dale Chu] was very devoted and loyal to his father.[102]

State witness Joann Weiss testified that because of Dale's Korean culture, Dale had no choice but to commit arson:

> I know that Dale would have to get something out of it, but his dad is the one that should be sitting in that chair. In my eyes, his dad is the one that is responsible . . . .in his culture and in Dale's beliefs, you just don't talk back to your parents, you don't – you do what your parents ask of you.[103]
>
> . . . [Dale] would never, ever do anything against his dad's wishes.[104]

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[101] State's Reply Brief at 24.

[102] R. 72 at 77.

[103] R. 73 at 199.

[104] R. 73 at 199.

Weiss was the only State witness who testified about Korean culture. Weiss had serious credibility issues regarding her background,[105] inability to keep her story straight,[106] and her trial testimony regarding fire cause directly contradicted known physical facts to such extent that her testimonial claims were untruthful and literally impossible.[107]

In the State's closing argument, the district attorney told the jury that Dale Chu was faced with a Korean "test of loyalty" which put such a "tremendous bond" on Chu that he was forced to "carry out that mission" of arson:

> Dale Chu was faced with the biggest test of loyalty of his life, loyalty on behalf of his dad. . . . And he carries out that mission . . . to get out of that tremendous bond.[108]

The State's fictionalized Korean "test of loyalty"[109] with its "tremendous bond" and the "mission" of arson was told to

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[105] R. 57.

[106] R. 70 at 20, 25; R. 73 at 210, 212, and 221.

[107] R. 73 at 212, 221, and 249.

[108] R. 75 at 152-153.

[109] The district attorney's fictionalized Korean "test of loyalty" scenario is disturbingly analogous to the images of the fictional character Dr. Fu Manchu created by Sax Rohmer in 1913:

> The fictional character Dr. Fu Manchu embodies the "Yellow Peril" and left a powerful and lasting imprint on the U.S. imagination: "Fu Manchu . . . has mastered Western knowledge and science without comprehending 'Western Ethics.' . . . He will use any means to achieve his goal . . . he can command rape and torture . . . ." Keith Aoki, *"Foreignness" & Asian American Identities: Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes,* 4 UCLA Asian Pacific American Law Journal 1, 37 (1996).

(Continued on following page)

the jury in order to make sense of the troubling contradictions of the State's weak case.

In a report concerning the specific stereotypes used at this trial, Dr. Yueh-Ting Lee, a Racial Stereotype Expert,[110] (App. 25-54) explained why the racial stereotypes used by the State and Weiss are "old" and "inaccurate":

> Ms. Joann Weiss words and Attorney Biskupic judgment involved an old and inaccurate racial/cultural stereotype of Asian Americans. . . . Sociologist Betty Lee Sung (1985) and anthropologist Francis L. K. Hsu found that . . . [e]ven though their parents wanted their children to follow Chinese cultural norms, values, and beliefs, [American born Chinese] became more Americanized, more disobedient to their parents and less loyal to their family or friends. . . . Strom, Daniels, & Parks (1986) found that Korean American parents tended to encourage their children to think independently and to allow them to have different opinions . . . .[111]

Dr. Lee's expert opinion that the racial stereotypes used by the State and Weiss are "old" and "inaccurate" is well supported with convincing research done by several other experts.

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In comparison, the district attorney's fictionalized Korean "test of loyalty" scenario has So Man Chu (in place of Fu Manchu) using any means to achieve his goal including the command of arson.

[110] Dr. Yueh-Ting Lee was retained for the post-verdict motion. Dr. Lee is an Associate Professor of Psychology at Minnesota State University and author of numerous journal articles and books on racial and ethnic stereotypes.

[111] R. 50.

Dr. Lee explained that the actual facts of Dale Chu's life suggest that Dale Chu was, in reality, very disobedient to his father, in stark contradiction to the old and outdated Asian stereotype of loyalty that the State and Weiss used at trial:

> . . . Mr. Dale Chu was born in the USA in 1980. That is, Mr. Dale Chu tended to be more American rather than to be traditional Korean. In fact his relationship with his father was unpleasant . . . left home when he was 15 years old. . . . Father never reported to the police.
>
> Mr. Dale Chu did things that tended to be against his parent's will. He had several problems with his driving license. He had been revoked more than 3 times. Dale had a child out of wedlock . . . born on November 29, 1999. His father did not know the child was born until April 2000. All evidence suggests that Mr. Dale Chu was not loyal to his father. Instead, he was very disobedient to his family.[112]

Dr. Lee explained that research has found that people use stereotypes to make "quick and easy decisions," producing a significant negative impact on those stereotyped/victimized group members:

> Though stereotypes sometimes help to make quick and easy decisions, Lee, McCauley, & Draguns, (1999); Lee, Albright and Malloy, (2001); Ottani & Lee, (1995), Strangor (1995) and Fiske (1998) found that application inaccuracy in social or cultural stereotyping produces a significant negative impact on those stereotyped or victimized group members. Thus stereotyping Mr. Chu

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[112] R. 50.

> as loyal to his father due to his Korean culture must be cautioned and carefully examined.[113]

As the court in *United States v. Doe* explained, this effect is enhanced by a prosecutor making the statements to the jury:

> Undeniably, prosecutorial remarks kindling racial or ethnic predilections can violently affect a juror's impartiality. Comments of that sort are especially egregious because of the possibility that the jury will give special weight to the prosecutor's arguments, not only because of the prestige associated with his office, but also because of the fact-finding facilities presumably available to him. Just how much influence the prosecutor's summation exerted upon the jury is, of course, incapable of precise measurement, but its portent for harm is ominous. 903 F.2d 16, 28 (D.C. Cir. 1990).

By using inaccurate racial stereotypes as the primary piece of evidence to make sense of an otherwise illogical and contradictory set of facts, the State invited the jury to make "quick and easy decisions" about Dale Chu using inaccurate Korean stereotypes to obtain a verdict of guilty.

### B. The State's Use Of Inaccurate Korean Stereotypes Resulted In An Unjust Conviction Where The Evidence Does Not Support That A Crime Was Even Committed.

The State did not have facts to support that a crime had even been committed. The State had a fire of unknown cause, as evidenced by each of the State's witnesses' explanations for how the fire was started being

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[113] R. 50.

directly contradicted by the other State witnesses at trial.[114] Further, none of these theories could be confirmed by physical evidence from the fire site.[115] If the circumstances of a particular case indicate a significant likelihood that racial bias may influence a jury, the Constitution requires questioning as to such bias. *McCleskey v. Kemp*, 481 U.S. at 309 n. 30 citing *Ristaino v. Ross*, 424 U.S. 589, 596 (1976). When prosecutorial error of constitutional dimension occurs, the state has the burden of establishing that it was harmless. *United States v. Doe*, 903 F.2d 16, 27 (D.C. Cir. 1990) citing to *Chapman v. California*, 386 U.S. 18, 24 (1967).

In determining whether an improper remark made by the prosecutor substantially prejudiced a defendant's trial, the court looks at the certainty of conviction absent the improper remarks. *U.S. v. Richardson*, 161 F.3d 728, 737 (D.C. 1998). The facts in Dale Chu's case, as detailed in the statement of case and facts, demonstrate how the State took a fire of unknown cause and used inaccurate Korean stereotypes as evidence in trial in order to obtain a conviction of arson against Dale Chu.

Further, the State never had any credible evidence to support that Dale Chu was a person who committed a crime. The State's lay witnesses, Joann Weiss and Nicholas Wales, had such serious credibility problems that the State should not have allowed them to testify at trial.[116] The State knew that the testimony of Joann Weiss and

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[114] R. 73 at 107, 113, 212, 221, 245, 249, 253, 279, and 292.

[115] See footnote 109.

[116] R. 57; R. 68, Exhibit 70; R. 72 at 20, 25; R. 73 at 210, 212, 221; R. 75 at 35, 43.

Nicholas Wales regarding Dale's alleged confessions directly contradicted each other, the State's experts, and known physical facts.[117] The *Chu* court itself acknowledged that Wales' and Weiss' testimonies of Dale's alleged confessions were in conflict with the State's expert testimony, implying untruthfulness of both Weiss and Wales. *Chu* at 887. With no confessions and no one who could positively identify Dale Chu as even entering or exiting the building,[118] much less doing anything wrong, there is insufficient evidence that Dale Chu was a person who committed a crime.

Further, there are serious questions concerning the district attorney portraying Wales as truthful and cooperative in his September 14, 2000 letter, which the State introduced to the jury. Disturbingly, this letter substantially and directly contradicts the evidence that Wales had lied numerous times under oath, to police officers, and to State investigators as well as obstructed the Chu investigations.[119] The September 14, 2000 letter with its false portrayal of Wales, the substantial amount of facts that suggest coercion of Wales and Weiss, and the nondisclosure of material evidence about Wales and Weiss suggest that the State should not have prosecuted Dale Chu. As this Court has observed, a state's nondisclosure of evidence can make its case appear much stronger, and the defense case much weaker, than the full facts would suggest. *Kyles v. Whitley*, 514 U.S. 419, 429 (1995) See also *Doe* at 28. (holding that the prosecutor's racial remarks were not

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[117] R. 73 at 107, 113, 212, 221, 249, 253, 279, and 292.

[118] R. 72 at 153 and 175.

[119] R. 68 at Exhibit 70.

harmless error because the evidence against appellants "though considerable, was hardly overwhelming" to create a context such that the court could not know whether the improper argument contributed to the convictions.)

## III. THE STATE SHOULD NOT BE GIVEN THE GREEN LIGHT TO USE RACE AND CULTURE AS EVIDENCE TO PROVE MOTIVE IN A CRIMINAL PROCEEDING BECAUSE IT BLATANTLY VIOLATES THE CONSTITUTIONAL GUARANTIES OF THE FOURTEENTH AMENDMENT.

This case should be reviewed because Wisconsin appears to be the only state in the nation with contemporary case precedent holding that it is not *improper*[120] for a prosecutor to use race and culture as evidence to prove motive that a crime was committed.[121] Distinctions based upon ancestry are as "odious" and "suspect" as those predicated on race. *United States v. Doe* at 21 citing to *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943) and *Korematsu v. United States*, 323 U.S. 214, 216 (1944). See also *United States v. Vue*, 13 F.3d 1206, 1212-14 (8th Cir. 1994) (reversing opium-related convictions of Hmong defendants for error in allowing expert to testify that 95% of the opium-smuggling cases in the area were Hmong-related); *United States v. Doe*, 903 F.2d 16, 20-22 (D.C. Cir. 1990) (holding expert testimony concerning Jamaican immigrants' take-over of local drug trade was unfairly prejudicial in drug

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[120] See footnote 100.

[121] Because the Wisconsin Supreme Court declined review, the Court of Appeals' published opinion holding that it is proper for prosecutors to use culture as evidence of motive that a crime was committed remains Wisconsin's current law.

trial of Jamaican defendants); *State v. Vue*, 606 N.W.2d 719, 723-724 (Minn.App. 2000) (expert testimony that defendant's Hmong descent makes him a probable spouse-abuser caused severe risk of prejudice).

The *Chu* court cited the case of *Aliwoli v. Carter*, 225 F.3d 826 (7th Cir. 2000) and misapplied its holding concerning the circumstances articulated in this case rather than to apply the long-standing rule that "the Constitution prohibits a prosecutor from making race-conscious arguments since it draws the jury's attention to a characteristic that the Constitution generally demands that the jury ignore. *McClesky v. Kemp*, 481 U.S. 279 (1987). The Court of Appeals then broadened the holding of *Aliwoli* in a way that the case holding does not support nor was intended.

In *Aliwoli*, the defendant admitted shooting three police officers, but claimed he was not guilty by reason of insanity. *Aliwoli* at 830. The prosecutor asked questions to experts concerning Aliwoli's beliefs as a black Muslim. Each expert witness characterized black Muslims as peaceful and law-abiding citizens and further denied that Aliwoli shot the officers because of religious belief. *Id.* at 830-831. Given these circumstances, the court stated the prosecutor's questions were "inappropriate" but were clearly intended to rebut Aliwoli's insanity defense. *Id.* The court noted that the weight of the evidence was "very convincing" since Aliwoli himself admitted shooting three police officers. *Id.* at 830. Finally, when examining the testimony as a whole to determine the potential impact on the outcome of the trial, the court particularly noted the prosecutor's closing argument did not mention defendant's race or religion:

> Having obtained no testimony to substantiate its theory that Aliwoli's motive was based on zealous religious beliefs rather than his delusions, the

> prosecution never mentioned Aliwoli's race or religion during closing arguments. *Id.* at 831.

Given these circumstances, the court held that there was no constitutional error. *Id.*

In contrast, the *Chu* court held that it is not improper for a prosecutor to used Korean culture to show motive that a crime was committed. It is equally disturbing that the *Chu* court equated the district attorney's fictitious Korean "test of loyalty" which put such a "tremendous bond" on Chu that he was forced to "carry out that mission" of arson,[122] to merely summarize Chu's "personal beliefs about family loyalty based on his upbringing and culture." *Chu* at 884. The *Chu* court further stated that this rationale is based primarily on Joann Weiss' testimony, *Chu* at 884, while the court itself acknowledged serious credibility concerns about Weiss' trial testimony, *Chu* at 887, and her background,[123] *Chu* at 886, and completely disregarded Dr. Lee's expert opinion, as an expert on racial and ethnic stereotypes, regarding the inaccuracy of the stereotypes used in this case.[124] In effect, the court's decision

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[122] R. 75 at 152-153.

[123] The jury was never told about Weiss' criminal charge of obstructing an officer, *State v. Joann Weiss*, Outagamie County Court Case No. 97CM1688, involving Weiss telling minors to lie to police officers and Weiss herself lying to a police officer. R. 50. The jury was also never told about the case of *Town of Grand Chute v. Joann Weiss*, Citation No. G91711 (five counts of procuring alcohol to minors) or that Weiss was a police informant for the Appleton and Grand Chute police departments. R. 50. The court acknowledged that "Chu may be correct that the jury may have viewed Weiss differently if it had known about the prior events . . . ." *Chu* at 886.

[124] The *Chu* opinion is very misleading precedent in that there is absolutely no mention, not one word, to indicate that Dr. Lee, a racial and cultural stereotype expert, had analyzed the statements at issue

(Continued on following page)

allows the prosecutor's unlimited use of racial and cultural stereotypes during jury trial as motive that a crime has been committed, *regardless of whether the stereotype is untruthful or inaccurate.*

This case constitutes the ultimate green light, indeed it is not *improper*, for prosecutors to use racial and cultural stereotypes as evidence, especially whenever a State's case is weak. Even judges deeply concerned about defendant's constitutional rights must heed to this published decision because in Wisconsin the law is that it is not *improper* for the prosecutors to play the race card.

This case is further destined to become dangerous precedent for prosecutors across the nation in order to explain away racist statements during trial, *particularly should this Court chose to decline to accept this petition.* History has shown that racial stereotyping targets and victimizes innocent people when there is no legitimate evidence of a crime. It is a regretful part of American history that after the bombing of Pearl Harbor, thousands of Japanese-Americans were sent to internment camps because of unsubstantiated suspicions connected to their Japanese heritage, even though it is a fact that Japanese-American soldiers bravely fought for the United States against Japan in World War II. Forty years later, in *Korematsu v. United States*, the court concluded that "military necessity did not warrant the exclusion and detention of ethnic Japanese" but that instead the "broad historical causes which shaped these decisions were race

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and had given his opinion, supported with substantial research, that the District Attorney's and Weiss' statements to be "old" and "inaccurate" stereotypes.

prejudice, war hysteria and a failure of political leadership." 584 F. Supp. 1406, 1416-17 (1984). Given the current hysteria concerning the events of September 11, 2001, literally resulting in fear of many Americans that they could be jailed merely because of their race or culture, it would be a serious mistake to tolerate the State's implication that Dale Chu was forced to commit arson because of his Korean culture.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated this 4th day of September 2002.

Respectfully submitted,

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**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 01-1934-CR** Cir. Ct. No. 99-CF-817

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DALE H. CHU,**

**DEFENDANT-APPELLANT.**

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(Filed Mar. 26, 2002)

APPEAL from judgments of the circuit court for Outagamie County: DEE R. DYER, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 CANE, C.J. Dale Chu appeals from judgments entered on jury verdicts convicting him, as a party to a crime, of committing arson of both a building and property

with the intent to defraud an insurer, contrary to WIS. STAT. §§ 943.02(1)(b), 943.04 and 939.05.[1] Chu argues that he was wrongfully subjected to racial stereotyping when the prosecutor referred to his Korean culture. He presents four additional arguments, relating to exculpatory evidence, sufficiency of the evidence, ineffective assistance of counsel and the trial court's admission of evidence. Finally, he seeks a discretionary reversal. We reject Chu's arguments and affirm the judgments.

## STATEMENT OF FACTS

¶2 Chu's convictions relate to a January 4, 1998, fire at one of several dry cleaning stores owned by Chu's parents, So Man and Sun Hee. The fire destroyed part of the building, as well as some machines and dresses that were in the store. Chu, who was a seventeen-year-old high school student in January 1998, often worked at the stores.

¶3 According to Belinda and Jeff VanDeLeygraaf, who lived in the house next to the store, a small car playing loud music pulled into the store driveway at approximately 8 p.m. The VanDeLeygraafs both testified that they saw three or four individuals near or in the car.

¶4 The VanDeLeygraafs saw an Asian male exit the store through the overhead garage door and get into the car. Then, the four individuals drove away. Jeff testified that he recognized the man as someone who drove the delivery van for So Man.

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[1] All statutory references are to the 1999-2000 version.

¶5 At approximately 8:30 p.m., two citizens driving past the store observed that it was on fire. They went to the VanDeLeygraafs' home and asked them to call 911. Officer Jeffrey Gross of the City of Appleton Police Department was dispatched to the store.

¶6 Upon arrival, Gross observed an open window on the east side of the building. The fire ultimately was extinguished, but not before it caused substantial damage to the building and property inside, including machines and dresses. Law enforcement began an investigation to determine the cause of the fire. Investigators found no sign of forced entry and concluded that the open window indicated an attempt to the keep [sic] oxygen in the building so that the fire would burn.

¶7 Eugene Reece, Deputy Fire Chief for the City of Appleton and one of the State's arson experts, testified that he and his team of investigators eventually ruled out electrical appliances, spontaneous combustion of chemicals, sunlight and accidental factors as causes of the fire. Reece's opinion was that the fire was intentionally set. Daniel Hughes, an independent fire investigator and another of the State's arson experts, held the same opinion.

¶8 At the scene of the fire, Randy Cook, an investigator with the police department, discovered financial and court documents which prompted him to investigate a possible financial motive for the fire. Julie Russell, financial investigator for the police department, testified that So Man's business was in serious financial trouble in 1997. There were times in 1997 when So Man's business checking account was $30,000 overdrawn. Additionally, So Man did not make the $7,100 mortgage payment on his business

for December 1997. There were also $87,000 in judgments against So Man, and the Wisconsin Department of Revenue had issued warrants against So Man for not paying taxes.

¶9 Cook's investigation further revealed that So Man took out an additional $80,000 in insurance on his business two days before the fire. So Man ultimately submitted a claim to his insurance company for $499,030 in losses, which included $82,732 of bridal inventory, including tuxedos and dresses averaging about $400 apiece. None of the witnesses, however, saw any tuxedos in the store, and only thirty-nine hangers containing burned dresses were found at the scene, compared to the 400 to 500 that So Man claimed were there. Some of the wedding dress tags that were not destroyed revealed that the dresses were obsolete and had been purchased at a low cost.

¶10 Additionally, the room where the dry cleaned clothing usually hung from the ceiling was virtually empty. Outside, the investigators found the customers' clothing stored in one of the store's delivery vans.

¶11 Ultimately, Chu was charged, as a party to a crime, with committing arson of both a building and property with the intent to defraud an insurer. The State's theory was that So Man and Chu planned the fire because So Man needed insurance money to recover from his financial difficulties. The State said that Chu set the fire when he and three other teens went to the store at approximately 8 p.m., and that the VanDeLeygraafs saw him exit the building. In its opening statement, the State suggested that Chu's motive for helping his father was twofold. First, the State said Chu was devoted and loyal to

his father, "particularly, because of his Korean culture." Second, the State said that Chu expected to someday take over the business.

¶12 The State also introduced two witnesses who said that Chu told them that he set the fire. Joanne Weiss, the owner of the house where Chu lived in the summer of 1999 and a "surrogate mother" of sorts to Chu, testified that Chu admitted to her that he had been involved in the fire. She explained that "he didn't come right out and say, I set fire to the building, but he had taken measures for the business to burn down . . . . Dale said his dad had told him what to do." She said that Chu told her that the business was failing and that they wanted to put in a bridal shop, but they needed the money to do so.

¶13 Nicholas Wales testified that he attended a party with Chu days after the fire. Wales said that Chu told him he burned down the store. Wales said Chu explained that he did so because his father was "hurting for money," had taken out a big insurance policy and had asked his two sons, Chu and Jay, and several others to burn the store. Wales also testified that a month or two later, Chu told him that he was nervous he was going to get caught.

¶14 Chu's defense was that he was not involved in the fire. Although Chu cross-examined the State's arson experts with respect to their conclusions about the cause of the fire, he offered no expert testimony to refute their opinions that the fire was intentionally set. Rather, his defense was that even if it was arson, there was no evidence that Chu was involved. He suggested that he had no involvement in the financial aspects of the business and that he had not made any insurance claims.

¶15 Chu testified that earlier in the day on January 4, his father, brother and others cleaned and covered machinery in preparation for remodeling in the store. While his family worked in the store, Chu and his cousin, Suk Won, delivered clothes to So Man's other stores. He said that they all left the store shortly before 7:30 p.m. to return to the Chu residence.

¶16 Chu testified that he, Jay, Won and a friend, Mark Nelson, soon returned to the store because they had forgotten they were supposed to retrieve a fire extinguisher and take it to another of So Man's stores. The young men rode in Chu's vehicle, with Chu driving. Chu said that when they arrived, Won got out of the vehicle to retrieve the extinguisher from one of the vans parked outside the store, but no one entered the store.

¶17 The jury found Chu guilty, as a party to a crime, of committing arson of both a building and property with the intent to defraud an insurer. He was sentenced to seven years in prison and five years' probation, to be served consecutively. Chu filed several post-trial motions, all of which were denied. This appeal followed.

¶18 Chu presents six arguments: (1) his due process rights were violated when he was subjected to racial stereotyping; (2) his due process rights were violated when the State failed to provide exculpatory evidence concerning Weiss and Wales; (3) there was insufficient evidence to sustain the verdicts "because the State's experts and lay witnesses all had contradictory theories about how the fire started, none of which could be confirmed by the physical evidence from the fire site;" (4) his counsel provided ineffective assistance "by overlooking numerous deficiencies of the State's case and virtually embracing the State's

theory of guilt;" (5) the trial court erroneously admitted highly prejudicial and improper evidence; and (6) this court should exercise its power of discretionary reversal and grant him a new trial. We reject these arguments and affirm the judgments.

## DISCUSSION

### I. Racial stereotyping

¶19 Chu contends that his due process rights were violated when he "was subjected to racial stereotyping suggesting that Korean sons are automatons who blindly carry out the orders of their fathers even when the orders involve criminal activity." Specifically, he objects to three instances where Chu's race or culture were referenced.

¶20 First, in its opening statement the State said: "The evidence will show in fact as part of his family setup, and more particularly, because of his Korean culture, [Chu] was very devoted and loyal to his father." Second, Weiss testified:

> I know that Dale would have to get something out of it, but his dad is the one that should be sitting in that chair. In my eyes, his dad is the one that is responsible. Dale was a 16-year old kid and in his culture and in Dale's beliefs, you just don't talk back to your parents, you don't – you do what your parents ask you to do.[2]

Finally, the State in closing argument stated: "Dale Chu was – as a part of his life experiences, as part of his test of

[2] Chu was actually 17 years old at the time of the fire.

loyalty – was faced with the biggest test of loyalty of his life, loyalty on behalf of his dad . . . . And he carries out that mission . . . to get out of that tremendous bond."

¶21 Although Dale did not object to these statements at trial, he argues that "the State's use of racial stereotype amounted to plain error, and mandates reversal of Dale Chu's convictions because the use of racial stereotypes could well have enflamed the jury and resulted in a verdict based on something other than the evidence."

¶22 The State agrees that this court should review the remarks under a plain error analysis. *See* ***State v. Street,*** 202 Wis. 2d 533, 552, 551 N.W.2d 830 (Ct. App. 1996) ("plain error" must be obvious, substantial, and so fundamental that a new trial must be granted). However, the State contends that the statements by the prosecutor and Weiss were not improper. We agree.

¶23 Our conclusion is consistent with ***Aliwoli v. Carter,*** 225 F.3d 826 (7th Cir. 2000), where the seventh circuit recognized that although there is no place in a criminal prosecution for "gratuitous references to race," the State may properly refer to race where it is relevant to the defendant's motive. *See* ***id.*** at 831. Aliwoli was charged with attempting to kill three white police officers who stopped him for a routine traffic violation. ***Id.*** at 828. He pled not guilty by reason of insanity and presented expert witnesses who testified that Aliwoli suffered from a persecutorial delusional disorder that caused him to believe that police officers were members of a conspiracy to harass him. ***Id.***

¶24 To refute Aliwoli's claims, the State sought to establish that Aliwoli's membership in the Muslim faith gave him a motive to shoot the three police officers. ***Id.*** at

830. The prosecutor questioned witnesses about Aliwoli's religious beliefs as a Muslim. ***Id.*** at 830-31. For example, the State cross-examined two of Aliwoli's expert witnesses by asking whether Aliwoli's Muslim faith encompassed an anti-authority stance. ***Id.*** Aliwoli was convicted.

¶25 On appeal, Aliwoli argued that the prosecutor's questions deprived him of a fair trial. ***Id.*** at 831. The seventh circuit rejected Aliwoli's claim, stating:

> We find no constitutional error in the prosecutor's questions. *As a general rule, a racial remark is improper if it is "intentionally injected into volatile proceedings where the prosecutor had targeted the defendant's ethnic origin for emphasis in an attempt to appeal to the jury's prejudices."* [***United States v. Hernandez***, 865 F.2d 925, 928 (7th Cir. 1989).] It is apparent from the context of the prosecutor's questions that the references to Aliwoli's membership in the black Muslim faith were only meant to show that Aliwoli had a motive for shooting the police officers. In other words, the questions were clearly intended to rebut Aliwoli's insanity defense. Because the questions about Aliwoli's beliefs as a black Muslim focused solely on his state of mind and potential motive for the shootings, they were not improper. Although the questions mentioned Aliwoli's race and religion, none of them can be reasonably viewed as attempting to arouse jury prejudice towards blacks or Muslims. In short, there is no evidence that these comments were intended to play upon the prejudices of the jury.

***Id.*** at 831 (emphasis added).

¶26 Similarly, we do not view the prosecutor's statements as an attempt to arouse jury prejudice toward

Koreans. Rather, the statements were an attempt to preview and summarize evidence demonstrating that Chu had a motive for committing the arson: his personal belief, based on his upbringing and culture, that he should remain loyal to his family. Indeed, the jury heard evidence concerning Chu's individual beliefs, introduced through Weiss as admissions.

¶27 When Weiss testified about Chu's beliefs and his statements to her about the fire, she indicated that she had had conversations with Chu about his family makeup and the Korean culture. Then, the State asked her, "[H]ow did [Chu] describe it to you regarding his relationship with his father, So Man Chu?" She responded:

> His – his relationship with his father is, as he grew older, he was supposed to take care of his dad. Dale has a lot of pride. He – he takes care of the people that he loves very well and would never, ever do anything against his dad's wishes. To my understanding, if his father asked him to do something, he would do it.

¶28 Based on this testimony, it was not improper for the prosecutor to suggest that Chu held personal beliefs about family loyalty, based on his upbringing and culture, that suggest he would do as his father asked. The prosecutor did not ask the jury to find Chu guilty because he is Korean. Rather, the State suggested that Chu's beliefs gave him a motive to commit the arson to help his family and act consistently with his father's wishes. The statements do not constitute plain error.

## II. Exculpatory information concerning Weiss and Wales

¶29 Chu argues that his due process rights were violated when the State failed to provide him with crucial exculpatory information concerning Weiss and Wales. Under the Fourteenth Amendment to the United States Constitution, the prosecution's suppression of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment. ***Brady v. Maryland***, 373 U.S. 83, 87 (1963); *see also* ***State v. Nerison***, 136 Wis. 2d 37, 54, 401 N.W.2d 1 (1987).

¶30 The prosecution's duty to disclose evidence favorable to the accused includes the duty to disclose impeachment evidence as well as exculpatory evidence. ***Strickler v. Greene***, 527 U.S. 263, 280 (1999). Such evidence is material, however, only if there is "a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." ***United States v. Bagley***, 473 U.S. 667, 682 (1985). A reasonable probability of a different result is shown when the government's evidentiary suppression undermines confidence in the outcome of the trial. *See* ***Kyles v. Whitley***, 514 U.S. 419, 434 (1995). On appeal, this court independently applies the ***Bagley*** constitutional standard to the undisputed facts of the case. *See* ***State v. DelReal***, 225 Wis. 2d 565, 571, 593 N.W.2d 461 (Ct. App. 1999).

### A. Information concerning Weiss

¶31 Chu argues that both the State and the trial court had an obligation to provide him with exculpatory

evidence involving Weiss. Specifically, Chu contends that the State should have provided him with information concerning a deferred prosecution agreement and ordinance violations, all of which stemmed from a single incident where Weiss provided five minors with alcohol. Weiss was ultimately issued a ticket for five counts of providing alcohol to minors, an ordinance violation. She paid a $763 forfeiture.

¶32 Additionally, in the course of responding to law enforcement's investigation of the matter, Weiss allegedly obstructed the investigation. She was charged with knowingly obstructing an officer, a class A misdemeanor. Weiss and the State entered into a deferred prosecution agreement that required Weiss to have no criminal violations during the agreement period and to contribute $100 to the Outagamie County Juvenile Diversion Program. The three-month agreement began on October 5, 1998. Because Weiss complied with the terms of the agreement, the charges were dismissed on January 19, 1999. The judge who approved the agreement and dismissed the case was the same judge that presided over this case.

¶33 Chu argues that the State should have provided him with information concerning the deferred prosecution and the ordinance violations prior to trial. He also argues that because the trial court had actual knowledge of Weiss's deferred prosecution, the court should have advised Chu of the information. Chu complains that the court did not stop or correct Weiss's testimony in order to comport with the facts concerning the deferred prosecution, and did not recuse itself.

¶34 In response, the State asserts that neither the deferred prosecution agreement nor the ordinance violations

were disclosed because neither came to light in routine background checks on the State's witnesses. The State further argues that neither was required to be disclosed as ***Brady*** evidence and that neither had any bearing on the outcome of the trial. The State also maintains that there is no authority for Chu's assertion that the trial court had a duty to disclose information about Weiss.

¶35 First, we agree with the State that we should summarily reject Chu's argument that a trial court has an independent duty to disclose information about a prior case to a defendant. Chu offers no authority for this proposition and we decline to consider it further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (This court may decline to review issues which are inadequately briefed.).

¶36 Next, we conclude that Chu's due process rights were not violated because even if the State suppressed evidence favorable to Chu, the evidence was not material to the determination of his guilt. *See* ***Brady***, 373 U.S. at 87. Specifically, evidence of the deferred prosecution agreement and the ordinance violations was not material because it was not admissible and, therefore, would not have affected the outcome of the trial. *See* ***Bagley***, 473 U.S. at 682.

¶37 As the State notes, prosecutions that end in dismissal and ordinance violations are not admissible to impeach a witness because they are not "evidence that the witness has been convicted of a crime." *See* WIS. STAT. § 906.09(1). Although Chu may be correct that the jury may have viewed Weiss differently if it had known about the prior incidents, he fails to explain how the evidence would have been admissible. It was not automatically

admissible, and Chu does not identify grounds for its admissibility.

¶38 Instead, Chu's entire argument is based on his premise that Weiss had a motive to lie on the witness stand because of the deferred prosecution agreement. He cites ***United States v. Croucher***, 532 F.2d 1042, 1045 (5th Cir. 1976), for the proposition that prior arrests that have not led to a conviction may be used to demonstrate a witness's motive to strike a good bargain with the government. In doing so, he appears to argue that Weiss would lie to improve her bargaining position with the State with respect to charges arising from her arrest.

¶39 Here, however, Weiss's criminal charge had been dismissed with prejudice by the time she testified.[3] Indeed, the charge was dismissed even before Chu made admissions to Weiss. Additionally, Weiss had already paid the forfeiture associated with the ordinance violations by the time of trial. Accordingly, Weiss had no need, and thus no motive, to strike any bargain with the government. To the extent Chu is attempting to argue that evidence of the deferred prosecution agreement would have been admissible to show Weiss's motive to lie, we reject his argument.

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[3] Although the order of dismissal does not explicitly state that the charge was dismissed with prejudice, we will assume it was because dismissal with prejudice is required by statute. *See* WIS. STAT. § 971.39(1)(f) (upon completion of deferred prosecution agreement, the court shall dismiss the charge, with prejudice).

### B. Information concerning Wales

¶40 Chu argues that the State failed to disclose evidence that Wales was being investigated for false swearing and that a police report recommended that he be prosecuted for obstruction of justice. The State disagrees, asserting that the relevant reports were disclosed to Chu's counsel prior to trial, and noting that the trial court found so at the ***Machner*** hearing. [4]

¶41 In his reply brief, Chu offers no response to the State's argument concerning information about Wales. Unrefuted arguments are deemed admitted. *See* ***Charolais Breeding Ranches v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979). Accordingly, we reject his argument without further discussion.

## III. Sufficiency of the evidence concerning the cause of the fire

¶42 Chu argues that there is insufficient evidence to sustain the jury's verdicts because "the State's experts and lay witnesses all had contradictory theories about how the fire started, none of which could be confirmed by the physical evidence from the fire site." [5] It is unclear whether

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[4] At the ***Machner*** hearing, Chu's trial counsel testified that although he was not sure exactly when he received the last supplement to the police reports, he did receive the information prior to trial. *See* ***State v. Machner***, 101 Wis. 2d 79, 303 N.W.2d 633 (1981).

[5] This appears to be the only basis upon which Chu challenges the sufficiency of the evidence in his opening brief. He does suggest that he would have prevailed if Cook and Wales had given more complete and truthful answers, but that is not a challenge to the sufficiency of the evidence. In his reply brief, he raises additional factual issues for the

(Continued on following page)

Chu is disputing the jury's finding that the fire was intentionally set or asserting that the witnesses must agree precisely how the fire was intentionally set.

¶43 Assuming Chu is arguing the former, we conclude there is credible evidence to support the jury's findings that someone intentionally damaged the building and property by means of fire. Both Reece and Hughes offered this opinion. Reece explained that his opinion was based on the elimination of possible causes of the fire, such as electrical or mechanical malfunction. He told the jury about the extensive investigation and the months of probing that went into his determination and, in doing so, offered credible evidence that sustains the jury's verdict. *See* ***Weiss v. United Fire & Cas. Co.,*** 197 Wis. 2d 365, 388, 541 N.W.2d 753 (1995).

¶44 Chu may instead be arguing that the verdicts should be overturned because the State's experts could not agree on the precise method of starting the fire, and because their testimony conflicted with Chu's alleged admissions about how he started the fire. One of the State's experts, Reece, testified that natural combustibles were used to start the fire. Another expert, Hughes, testified that dresses were doused with something and lit with a match, although he admitted that there was no physical evidence that any kind of flammable liquid was

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first time in support of his argument that "The facts of the case show that Dale Chu was wrongly convicted." We decline to address the new issues raised in Chu's reply brief. *See* ***A.O. Smith Corp. v. Allstate Ins. Cos.,*** 222 Wis. 2d 475, 492-93, 588 N.W.2d 285 (Ct. App. 1998) (appellate court will not address arguments raised for first time in reply brief).

used. Chu also notes that Weiss gave conflicting testimony about what Chu allegedly told her about the specific method of starting the fire. Additionally, Wales testified that Chu said a rag was lit after it was placed in a can of paint thinner or ether paint.

¶45 We reject Chu's argument because the jury was required to determine *whether* the fire was intentionally set not specifically *how* it was set. *See* WI JI-CRIMINAL 1405 and 1410. Here, the jury could find that the fire *was* intentionally set even if the witnesses disagreed precisely *how* the fire was intentionally set. *See* ***State v. Toy***, 125 Wis. 2d 216, 222, 371 N.W.2d 386 (Ct. App. 1985) (The jury draws reasonable inferences from testimony, and it may choose to believe part of one witness's testimony and part of another's, even though the witnesses, as a whole, are inconsistent.).

## IV. Ineffective assistance of counsel

¶46 Chu argues that his trial counsel was ineffective because counsel "committed the most fundamental error of all by overlooking numerous deficiencies of the state's case and virtually embracing the state's theory of guilt." Specifically, Chu contends that his counsel failed to (1) retain an arson expert; (2) investigate Wales's and Weiss's backgrounds; (3) object to the State's use of racial stereotyping; and (4) object to other acts evidence. We reject Chu's first argument because we conclude counsel was not deficient. We reject his remaining arguments because Chu failed to respond to any of the State's arguments in his reply brief.

¶47 To establish ineffective assistance of counsel, a defendant must prove both that counsel's performance was deficient and that the deficient performance prejudiced the

defense. ***Strickland v. Washington,*** 466 U.S. 668, 687 (1984); ***State v. Smith,*** 207 Wis. 2d 258, 273, 558 N.W.2d 379 (1997). Because the defendant must show both deficient performance and prejudice, reviewing courts need not consider one prong if the defendant has failed to establish the other. *See* ***State v. Brewer,*** 195 Wis. 2d 295, 300, 536 N.W.2d 406 (Ct. App. 1995).

¶48 With respect to the "performance" prong of the test, a strong presumption exists that counsel acted properly within professional norms. *See* ***Strickland,*** 466 U.S. at 689. A defendant must demonstrate that his attorney made serious mistakes which could not be justified in the exercise of objectively reasonable professional judgment, deferentially considering all the circumstances from counsel's contemporary perspective to eliminate the distortion of hindsight. *See* ***id.*** at 689-91. Further, the defendant's own statements or actions may substantially influence the reasonableness of counsel's actions. *See* ***State v. Pitsch,*** 124 Wis. 2d 628, 637, 369 N.W.2d 711 (1985).

¶49 An ineffective assistance of counsel claim is a mixed question of law and fact. ***State v. Johnson,*** 153 Wis. 2d 121, 127, 449 N.W.2d 845 (1990). On review, we examine a trial court's findings of fact concerning the circumstances of the case and counsel's conduct and strategy under the clearly erroneous standard. ***State v. Tulley,*** 2001 WI App 236, ¶5, 248 Wis. 2d 505, 635 N.W.2d 807. However, whether counsel's performance was deficient and whether the deficient performance was prejudicial are questions of law that we review de novo. ***Id.***

### A. Failure to retain an arson expert

¶50 Chu argues that his trial counsel was deficient for failing to retain an arson expert, thereby embracing the State's theory that an arson had occurred. In closing argument, Chu's counsel stated that to argue that the fire was not intentionally set would be an insult to the jury's intelligence, but the fact that the fire may have been intentional did not prove that Chu started it. Counsel's testimony at the ***Machner*** hearing established that focusing on whether Chu was involved, rather than whether the fire was arson, was part of counsel's trial strategy. He explained, "Dale never particularly indicated to me that he didn't agree with it being characterized as an arson, his defense was, I didn't do it and beyond that I don't know who did."

¶51 Additionally, counsel testified that Chu did not have the funds to hire an arson expert. Finally, counsel stated that he did not retain an arson expert because he believed an expert's conclusions might actually hurt Chu's case.

¶52 The trial court concluded that counsel was not deficient. The court stated:

> I do find [trial counsel's] testimony to be particularly credible here today about all of the issues he testified about. [He] explained his rationale for all of his actions in this case, and he had good reasons, as he testified, for not hiring an arson expert. His client did not have sufficient funds. His other reasoning was that even if funds were expended, there was no guarantee whatsoever that the opinion would be anything different than the two opinions he saw by the State's expert witnesses.

These findings of fact concerning counsel's performance, based on the trial court's explicit credibility determination, are not clearly erroneous. Moreover, counsel's strategic choices, made after thorough investigation of the law and facts, are virtually unchallengeable. *See* ***Strickland,*** 466 U.S. at 690-91. We conclude that counsel was not deficient for failing to hire an arson expert.

### B. Other alleged deficiencies

¶53 Chu also argues that his trial counsel was deficient for failing to investigate Wales's and Weiss's backgrounds, object to the State's use of racial stereotyping and object to other acts evidence. In response, the State provides four pages of argument detailing why Chu's counsel was not deficient and why, in the alternative, Chu was not prejudiced. Chu's reply brief provides no response to these arguments. Accordingly, they are deemed admitted and we will not address them further. *See* ***Charolais Breeding Ranches,*** 90 Wis. 2d at 109.

## V. Challenges to the Admission of Evidence

¶54 Chu objects to several trial court rulings on evidence. Specifically, he argues that the trial court erroneously (1) admitted other acts evidence concerning gangs, drugs and child support; (2) refused to allow the defense to cross-examine Wales about the entire contents of an affidavit; and (3) allowed Weiss to testify as an expert when she stated that she had training as a "criminal thinking specialist" and that she believes that Chu "uses a lot of criminal thinking." Once again, the State has provided a detailed analysis of each alleged error, devoting over five pages of its brief to its argument that the evidence

was properly admitted and if not, that the admission of the evidence was harmless error. Chu provides no response to the State's arguments in his reply brief. We therefore deem the State's arguments admitted. *See* ***id.***

## VI. Discretionary Review

¶55 Finally, Chu argues that this court should exercise its power of discretionary reversal under WIS. STAT. § 752.35 because it appears that the real controversy has not been fully tried and that justice has miscarried.[6] In order to establish that the real controversy has not been fully tried, Chu must convince us that the jury was precluded from considering important testimony that bore on an important issue or that certain evidence which was improperly received clouded a crucial issue in the case. *See* ***State v. Darcy N.K.***, 218 Wis. 2d 640, 667, 581 N.W.2d 567 (Ct. App. 1998). To establish a miscarriage of justice, Chu must convince us there is a substantial degree of probability that a new trial would produce a different result. *See* ***id.*** An appellate court will exercise its discretion to grant a new trial in the interest of justice "only in

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[6] WISCONSIN STAT. § 752.35 provides:

> In an appeal to the court of appeals, if it appears from the record that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried, the court may reverse the judgment or order appealed from, regardless of whether the proper motion or objection appears in the record and may direct the entry of the proper judgment or remit the case to the trial court for entry of the proper judgment or for a new trial, and direct the making of such amendments in the pleadings and the adoption of such procedure in that court, not inconsistent with statutes or rules, as are necessary to accomplish the ends of justice.

exceptional cases." ***State v. Cuyler***, 110 Wis. 2d 133, 141, 327 N.W.2d 662 (1983).

¶56 Chu contends that the real controversy was not fully tried because of the undisclosed exculpatory evidence, the use of inaccurate racial stereotypes and wrongfully admitted other acts evidence, and for other reasons that we have already addressed. He states that justice has miscarried because the State's experts and lay witnesses contradicted each other with respect to the fire's cause and because trial counsel implied that Chu was guilty. For the reasons discussed above, we reject Chu's challenges to the convictions and further conclude that there is no reason to exercise our discretionary authority under WIS. STAT. § 752.35.

*By the Court.* – Judgments affirmed.

Not recommended for publication in the official reports.

OFFICE OF THE CLERK

Supreme Court of Wisconsin

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June 11, 2002

**To:**

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You are hereby notified that the Court has entered the following order:

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01-1934-CR *State v. Chu* L.C. #99CF817

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of defendant-appellant-petitioner, Dale H. Chu, and considered by this court;

IT IS ORDERED that the petition for review is denied, without costs.

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*Cornelia G. Clark*
*Clerk of Supreme Court*

# Psychological Report on the Case (the State of Wisconsin v. Mr. Dale H. Chu) involving Racial and Inaccurate Stereotypes

by Dr. Yueh-Ting Lee[1]

Minnesota State University

May 2, 2001

Yueh-Ting Lee, Ph.D, Associate Professor of Psychology and Chairperson of Department of Ethnic Studies at Minnesota State University, Mankato, received his Ph.D. in Personality and Social Psychology from State University of New York at Stony Brook. Empirically and cross-culturally, he has been doing much scientific research on racial and ethnic stereotypes and stereotyping, person perception, social judgment, social justice and identity, intergroup and interpersonal conflict for over 15 years. He has authored or co-authored about 50 psychological articles in referred journals and also has 5 scholarly books published by top-notice publishers (e.g., *Stereotype Accuracy: Toward Appreciating Group Differences* by American Psychological Association in Washington D.C. in 1995 and *Personality and Person Perception across Cultures* by Lawrence Erlbaum Associates Publishers in New Jersey in

[1] As a stereotype expert witness, I would like to clarify two issues. First, ordinarily it is charged a lot of money for my expertise. This case is exceptional, for I worked on it at no charge out of my interest in the principle of social justice and humanism. Second, I am extremely busy, and I will be out of the country for a psychological conference within a few days and be back and available in June, 2001. Correspondence concerning this technical report should be directed to Dr. Y-T Lee, Morris Hall 109, Minnesota State University, Mankato, MN 56001 (yueh-ting.lee@mnsu.edu)

1999). He is a member of American Psychological Association, and was nominated as one of the outstanding Asian American psychologists and listed in the *2000 Outstanding Scientists of the 20th Century* (2nd Edition). Cambridge, England, 2000.

The investigation approach to this case attempts to be psychologically scientific and professionally objective. This report is written based on Dr. Lee's expertise, legal transcripts/raw materials (on the State of Wisconsin v. Dale H. Chu) and email and telephone communication between Mr. Andrew Shaw and Dr. Yueh-Ting Lee. The writing and presentation style of this technical report is consistent with the format of American Psychological Association.

## Overview of this Report

This report includes five parts. Part 1 introduces a question concerning Ms. Joanne Marie Weiss's testimony about Asian culture and loyalty. Part 2 is about scientific findings of human perceptions, stereotyping and group status. Part 3 pertains to old and inaccurate stereotypes of Asians and changing Asian American culture. Part 4 presents evidence that Mr. Dale Chu was actually disobedient or disloyal to his father. In Part 5, it is concluded that the case psychologically involved inaccurate racial stereotype of Asian Americans and American culture, and that the charge that Mr. Dale H. Chu was loyal to his parents is not true.

## 1. RESEARCH QUESTIONS CONCERNING MS. JOANNE MARIE WEISS'S TESTIMONY ABOUT ASIAN CULTURE AND LOYALTY

As can be seen on the page of 199 (Lines 2-24), Mr. Biskupic (Q) directly examined Ms. Joanne Marie Weiss (A) on September 20, 2000:

> "A: I (Joanne Weiss) know that Dale would have to get something out of it, but his dad is the one that should be sitting in that chair. In my eyes, his dad is the one that is responsible. Dale was a 16-year [year] old kid and in his culture and in Dale's beliefs, you just don't talk back to your parents, you don't – you do what your parents ask you to do.
>
> Q: Did you have conversations on that day and on other days where Dale explained his family make-up and the Korean culture?
>
> A: Yes, we did.
>
> Q: And how did he describe it to you regarding his relationship with his father, So Man Chu?
>
> A: His – his relationship with his father is, as he grew older, he was supposed to take care of his dad. Dale has a lot of pride. He – he takes care of the people he loves very well and he would never, ever do anything his dad's wishes. To my understanding, if his father asked him to do something, he would do it. . . . "

Based on Ms. Joanne Weise's testimony, Attorney Biskupic stated on Page 77 (Lines 1-5):

> "The evidence will show that this defendant, Dale Chu, was an active worker in the business. The evidence will show in fact as part of family

> setup, and more particularly, because of his Korean culture, he was very devoted and loyal to his father."

The major research question is: **Should Mr. Dale Chu be racially stereotyped as loyal to his father because of his Korean Culture?**

## 2. HUMAN PERCEPTIONS, STEREOTYPING AND GROUP STATUS

Very often used, stereotypes are part of human cognition or mental perception of certain characteristics concerning members of a social or cultural group and category. An enormous amount of data and evidence (see Darley & Cooper, 1998; Horowitz, 1985; J. Jones, 1988; Lee, 1993a; Lee, 1993b; Lee, 1994; Lee & Ottati, 1995; Organista, Chun, Marin, 1998; Sedikide, Schopler, & Insko, 1998; Spencer, Fein, Wolfe, Fong, & Dunn, 1998) showed that stereotypes are more complicated than is realized, including stereotype accuracy or inaccuracy, and stereotype negativity or positivity. Also other research (e.g., Fiske, 1994, 1998; Lee, 2000) revealed that members of a powerful or dominant majority group (e.g., men, White) were more likely to use negative and inaccurate stereotypes racially and sexually toward members of a dominated minority group (e.g., women, Blacks). For example, it was found that in the late 1980s and 1990s, there have been a lot of negative and inaccurate racial stereotypes or racist graffiti or jokes against ethnic minorities in 175 public and private colleges and universities (Lee, 1994a, p. 79) and in legal system and/or jury's decision making (see Bodenhausen & Wyer 1985; Bodenhausen & Macrae, 1998). At the workplace, it was also found that White employees had negative and inaccurate

stereotypes toward those minority employees (see Brislin, 1993; Jackson and Associates, 1992; Lee & Duenas, 1995; Swim & Stangor, 1998; Steele, 1997).

This is consistent with other findings based on social dominance theory (SDT) by Sidanius and his colleagues (see Levin, Sidanius, Robinwitz, & Federico, 1998; Sidanius, Levin & Pratto, 1998; Sidanius & Pratto, 1993). As per this line of research, human social systems are predisposed to form groups based on social hierarchies, and most forms of social oppressions can be regarded as manifestations of the same human predisposition toward the establishment and maintenance of group-based social hierarchy. In a social hierarchy, there must be a hegemonic group (i.e., a dominant group) on the top and a negative reference group at its bottom.

Though stereotypes sometimes help to make quick and easy decisions (Lee, McCauley, & Draguns, 1999; Lee, Albright and Malloy, 2001; Ottati & Lee, 1995), Stangor (1995) and Fiske (1998) found that application inaccuracy in social or cultural stereotyping produces a significant negative impact on those stereotyped or victimized group members. Thus stereotyping Mr. Chu as loyal to his father due to his Korean culture must be cautioned and carefully examined.

## 3. OLD AND INACCURATE RACIAL STEREOTYPE AND CHANGING ASIAN AMERICAN CULTURE

Ms. Joann Weiss words and Attorney Biskupic judgment involved an old and inaccurate racial/cultural stereotype of Asian Americans. It is inaccurate because Asian Americans and their cultures have been changing a lot.

Sociologist Betty Lee Sung (1985) and anthropologist Francis L. K. Hsu (1983) found that American born Chinese (ABC) students tended to have bicultural conflicts (i.e., American and Chinese cultural conflicts). Even though their parent wanted their children to follow Chinese cultural norms, values and beliefs, ABC students became more Americanized, more disobedient to their parent and less loyal to their family or friends, which is also consistent with a empirical findings by Y-T Lee (1993c).

As clinical and adolescent psychologists, L. C. Lee and N. W. Zane (1998) pointed out that "some aspects of traditional Asian cultures can be particularly problematic for young people who wish to appear as 'American' as possible" (p. 139). They found that many Asian American students or teenagers described feelings of shame and denial of their heritage during their childhood and adolescence. In one of their studies of Korean Americans, L. C. Lee and N. W. Zane quoted the original interview from a Korean teenager:

> "Although I'm not really sure when I began really hating everything that was Korean . . . I wouldn't let my mom bring out Korean food when my friends were in the house. If they saw something in the refrigerator and asked what it was, I would say, 'gross stuff, I don't know,' and slam it shut. I would yell at my mother if she spoke Korean to me in front of my friends. 'We're in America now, speak American!'" (L. C. Lee & N. W. Zane, 1998, p. 141)

To some extent, acculturation effects often modify the view and practices of Asian American parents. In terms of authoritarian-control personality, Chinese American parents

scored higher than White American parents but scored lower than Chinese parents from Taiwan (L. C. Lee & N. W. Zane, 1998; Chiu, 1987). In a similar manner, Strom, Daniels, & Parks (1986) found that Korean American parents tended to encourage their children to think independently and to allow them to have different opinions, indicating that parental expectations for their children no longer are very traditional.

## 4. IS MR. DALE CHU REALLY OBEDIENT OR LOYAL TO HIS FATHER?

Based on the investigation on the relationship between Mr. Dale Chu and his father via Attorney Andrew Shaw, Mr. Dale Chu was born in the USA in 1980. That is, Mr. Dale Chu tended to be more American rather than to be a traditional Korean. In fact his relationship with his father was unpleasant before he was 15 years old. For example, his father said, "Dale left home when he was 15 years old . . . Father never reported to the police . . . " Dale's father worked all the time: 5:00 a.m. to 11:00 p.m. on Mondays through Saturdays. On Sunday, he and his wife went to a Korean church. They supported the Korean church . . . Dale and father never really talked.

Mr. Dale Chu did things that tended to be against his parent's will. Dale had several problems with his driving license. He has been revoked more than 3 times. Dale had a child out of wedlock, and the birthmother is Sonya Cross. His daughter's name is: Jaddin M. Cross, born November 29, 1999. His father did not know the child was born until April 2000. He saw the child in the summer of 2000.

All evidence suggests that Mr. Dale Chu was no [sic] loyal to his father. Instead he was very disobedient to his family.

## 5. CONCLUSION AND SUMMARY

The charge that Mr. Dale Chu was loyal to his family due to his culture has cognitively involved inaccurate and old racial stereotypes of Asian Americans and Asian American culture. Scientific research showed that the dominant group (e.g., white) tends to use inaccurate stereotypes of the dominated group in their cognition and decision making. Research on Asian (including Korean) Americans showed that Asian American cultures have been changing significantly. Those American born Asian American were found to be more Americanized and less loyal to their parents. Consistent with scientific research, much evidence suggests that Mr. Dale Chu was not loyal to his father at all and tended to disobey his father instead.

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## CURRICULUM VITAE

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## EDUCATIONAL AND TRAINING BACKGROUND

**University of Pennsylvania** (Post-doctoral training and research), Department of Psychology. Worked with Professors Albert Pepitone and Martin E. P. Seligman on such projects as cross-cultural studies of beliefs and justice, diversity, and attributional style and optimism, 1992-1993. Also worked with Professor Clark McCauley, a co-director of Solomon Asch Center for Ethnopolitical Conflict as UPENN, on stereotype accuracy and modal personality, 1992-1994.

**State University of New York at Stony Brook**, Doctor of Philosophy (Ph.D.), Personality/Social Psychology, Department of Psychology. Worked with Professors Dana Bramel and Victor Ottati on issues related to cross-cultural psychology and diversity training, ethnic studies, social cognition, human motivation and psychology of conflict at the workplace; also worked with Professor David Glass on stress, health psychology and behavioral medicine, 1986-1991.

**Beijing Normal University (in Northern China)**, M.S. Department of Psychology. Worked with Professors C. Zhang and H. Li on Western psychology and industrial and organizational psychology and psychological testing and assessment, 1984-1986.

**Changsha Railway University (in Southern China)**, B.A. (major in English Language and

American Literature). Department of Foreign Languages, 1980-1984.

## EMPLOYMENT HISTORY

| | |
|---|---|
| 2000-present | Chair and Associate Professor. Department of Ethnic Studies. Minnesota State University, Mankato, Minnesota. |
| 1997-2000 | Associate Professor (with indefinite tenure). Department of Psychology. Westfield State College, Massachusetts. |
| 1994-1997 | Assistant Professor. Department of Psychology Westfield State College, Massachusetts. |
| 1991-1994 | Assistant Professor. Department of Humanities & Social Sciences. Philadelphia University, Pennsylvania. |
| 1989-1991 | Instructor. Department of Psychology, State University of New York at Stony Brook. |
| 1990-1991 | Researcher and computer consultant (for the programs of Graduate Student Recruitment and John Turner Fellowship for minority students). Graduate School, State University of New York at Stony Brook. |
| Pre-1989 | Teaching Assistant and Lecturer (partial lecturing responsibilities), Department of Psychology, State University of New York at Stony Brook. |

## TEACHING EXPERIENCE

1. Courses Taught for Undergraduate Students:

   Introduction to Psychology, Research Method, Statistics and Computer Application, Social Psychology, Theories of Personality, Industrial and Organizational Psychology, Psychology of Work, Cross-Cultural Psychology, Psychology of Racism, Counseling Psychology, and Psychology of Conflict, Introduction to Multicultural and Ethnic Studies, American Racial Minorities.

2. Courses Taught for Graduate Students:

   Social Psychology Topics, Personality and Culture, Cultural and Ethnic Issues, Quantitative Method, Organizational Behavior, and Diversity Management and Global Business, Social Justice in Ethnicities and Gender; Asian American Studies, Helping across Cultures.

## ADMINISTRATIVE AND MANAGERIAL EXPERIENCE

| | |
|---|---|
| 2000-present | Chairperson. Department of Ethnic Studies, Minnesota State University, Mankato, Minnesota. |
| 1995-2000 | Director of Multi-cultural and Ethnic Studies (MCES). Westfield State College, Massachusetts. |
| 1993-1995 | Organizer of the Stereotyping Accuracy Research Project funded by the American Psychological Association with full responsibilities of running a national conference at Bryn Mawr College, PA |

and coordinating with various scholars on the publication of a scholarly book.

1991-1994 Deputy Director of the Psychology Program & Lab. Philadelphia University.

1989-1991 Graduate & Family Housing Manager in Chapin Complex Apartments. State University of New York at Stony Brook.

1988-1990 Vice President and President of Chapin Apartment Residents Association. State University of New York at Stony Brook.

## CONSULTING/TRAINING EXPERIENCE

Multiculturalism/Diversity, outgroup homogeneity effect and stereotyping. Consulting as a stereotype expert for the Hilton Hotels Corporation in Washington, D.C. in March-May, 1999.

Marketing/Selling personal computers: Consumer behavior of different cultural groups and long-term profit. Consulting for New York Industries USA, Inc. in New York (1996-1998).

Diversity teaching, research and practice in American psychology. A five-day cross-cultural training and workshop organized for professional Chinese psychologists and professional managers with three other trainers and lecturers (Drs. R. Luo, S. Hu, and X. Xu) in Beijing (China) in July 1997.

Stability and future development of Asian business in New York City. Consulting for D. R. Realty Company in New York (1994-1996).

Loyalty, corporate identity and diversity related to organizational culture. A one-day workshop organized for the Chief Executive Officers of Federal Credit Union (Bank) in Philadelphia (with Professor J. Abelson) in July, 1993.

Sino-American negotiation behavior, conflict and cultural differences. A one-day seminar held for the staff and managers of the International Business Section in the People's Insurance Company in Changsha, Hunan Province (China) in May, 1993.

Preference of social and behavioral scientists for a computer software program. Consultation for the Institute for Scientific Information in Philadelphia in December, 1992.

Computer consultant and researcher for the Graduate School at State University of New York at Stony Brook in 1990 through 1991.

## STUDENTS ADVISING AND COUNSELING

Supervision and advisement for undergraduate and graduate students both in Psychology and in Ethnic Studies (2000-present) at Minnesota State University, Mankato.

Supervised and advised over 30 psychology majors (per year) on their academic work, social life, and emotional issues, as a faculty advisor and non-licensed counselor at Westfield State College (1994-2000) and at Philadelphia University (1991-1994).

Supervised and advised about 5 undergraduate and/or graduate students (per year) on their psychology research projects both at Westfield State College

(1994-now) and at Philadelphia University (1991-1994).

Advisor and Counselor for the Psychology Club at Westfield State College (Massachusetts) for the past four years (1994-1998).

Psychological Counselor for the Campus Asian Students and Organizations at Philadelphia University (Pennsylvania) in 1991 through 1994.

## HONORS, AWARDS AND RECOGNITION

Listed in the *2001 Lexington Who is Who*. Garden City, NY, 2001.

Nominated as a Fellow in the International Academy for Intercultural Research, 2000.

Listed in the *2000 Outstanding Scientists of the 20th Century* (2nd Edition). Cambridge, England, 2000.

Listed in the *Who's Who Dictionary of International Biography: Twenty-Fifth Edition Publication*, Cambridge, England, 1997.

Recognized and evaluated in *Science News* on our scientific research on stereotype accuracy (see "Fighting stereotype stigma" – 6/29/96), Washington, DC., 1996.

Appointed to the Scientific Committee of the International Association for Cross-Cultural Psychology, Montreal, Canada, 1996.

Granted Permanent U.S. Residence by the U.S. Immigration and Naturalization Service (INS) as an outstanding scholar, Department of Justice, Washington, DC., 1993.

Outstanding Community Service Award, Chapin Graduate Complex Apartments, State University of New York at Stony Brook, 1991.

Excellence Scholarship, Graduate School, State University of New York at Stony Brook, 1990-1991 (awarded to only two graduate students).

American Psychological Association Traveling Award, Office of International Affairs, American Psychological Association, Washington, DC., 1989.

Teaching Assistantship, Department of Psychology, State University of New York at Stony Brook, 1987-1990.

Graduate Assistantship, Department of Psychology, State University of New York at Stony Brook, 1986-1987.

## PROFESSIONAL PRESENTATIONS

Presented at international, national and regional conferences over 50 psychological papers on social perception and cultural identity, stereotypes, stereotyping and prejudice, diversity management, multiculturalism and global business issues, attitudes and group (and organizational behavior), interpersonal and intergroup conflict, stress, health and life satisfaction, and personality and individual difference. Below are selected samples of my conference presentations.

Lee, Y. T. (1988). *Measures of Chinese collegians' attitudes towards the Chinese government and its policy*. Paper presented at the meeting of the Chinese scholars in the political and international studies, September, New York, NY.

Lee, Y. T., & Ottati, V., (1990). *Determinants of perceived group heterogeneity: An investigation of*

*Sino-American stereotypes*. Paper presented at the 98th Annual Convention of American Psychological Association, August, Boston, MA.

Lee, Y. T. (1991). *Social identity, group preference and perceived homogeneity: A Chinese-Black study of stereotypes*. Paper presented at the 68th Annual Conference of Eastern Psychological Association, April, New York.

Lee, Y. T. (1991). *Group Membership Salience & Threats Enhance Perceived Ingroup homogeneity*. Paper presented at the 3rd Annual Convention of American Psychological Society, June, Washington, DC.

Lee, Y. T. (1991). *Psychological Theories in Ancient China: A Historical View*. Paper presented at the 99th Annual Convention of American Psychological Association, August, San Francisco, CA.

Lee, Y. T. (1992). *International Competition Decreased Ingroup Homogeneity: American Attitudes toward the Gulf War*. Paper presented at the 63rd Annual Convention of Eastern Psychological Association, April, Boston, MA.

Lee, Y. T. (1992). *Group Homogeneity as a Predictor of Sino-American Family Commitment and Stability*. Paper presented at the Annual Convention of the American Psychological Society, June, San Diego, CA.

Lee, Y. T. (1992). *Attributions and Perceptions: Cultural Identities and Differences in Sino-American Collegiate Education*. Paper presented at the Annual Meeting of Mid-Atlantic Region Association for Asian Studies, November, West Chester University, PA.

Lee, Y. T., & Hu, P. C. (1992). *Chinese Qigong as a Health Promotion*. Paper presented at the Annual Conference of American Psychological Association and National Institute for Occupational Safety & Health, November, Washington, DC.

Lee, Y. T. (1993). *Symmetry? People Get What They Deserve/Deserve What They Get*. Paper presented at the 22nd Annual Meeting of Society for Cross-Cultural Research, February, Washington D.C.

Lee, Y. T. (1993). *Taoist and Confucianist Concepts of Justice*. Paper presented at the 22nd Annual Meeting of Society for Cross-Cultural Research, February, Washington D.C.

Lee, Y. T. (1993). *A Cross-Cultural Research on the Judgment of Sino-American Politics and Personality: A "Kernel of Truth"*. Paper presented to the 64th Annual Conference of the Eastern Psychological Association, April, Arlington, VA.

Lee, Y. T., & Ernest, I. (1993). *Personal and Social Identity as Predictors of College Life Satisfaction*. Paper presented at the Fifth Annual Convention of the American Psychological Society, June, Chicago, IL.

Lee, Y. T. (1993). *A Pilot Study of Self-Motivational Testing (SMT) in Cross-Cultural Teaching and Learning: Stereotyping College Students*. Paper presented at the Teaching of Psychology conference at Ursinus College, November, Pennsylvania.

Lee, Y. T. (1994). *Justice from a Chinese point of view: Report on two experimental studies*. Paper presented at the 23rd Annual Conference of the Society for the Cross-Cultural Research, February, Santa Fe, NM.

Lee, Y. T. (1994). *Research on Stereotype Accuracy: A New Look at Cultural Identity and Social Conflict*. Paper presented at the 22nd Annual Conference of the National Association for Ethnic Studies, March, Kansas City, Missouri.

Lee, Y. T., Pellicci, J., & Hogan, D. (1994). *Outgroup Negativity and Positivity vs. Optimal Ingroup Favoritism: Stereotypes in Our Daily Life*. Paper presented at the 65th Annual Conference of the Eastern Psychological Association, April, Providence, RI.

Lee, Y. T., & Ottati, V. (1994). *Accuracy: A neglected component of stereotype accuracy research*. Paper presented at the conference of "Stereotype Accuracy: Current Research on Perception of Group Differences, June, Bryn Mawr College, Bryn Mawr, PA.

Duenas, G., & Lee, Y. T. (1994). *Stereotype accuracy in the management of cultural differences*. Paper presented at the conference of "Stereotype Accuracy: Current Research on Perception of Group Differences, June, Bryn Mawr College, Bryn Mawr, PA.

Lee, Y. T. & Chen, C. C. (1994). *The Effect of Modernization on Chinese values and Attitudes*. Paper presented at the 6th Annual Convention of the American Psychological Society, June 30-July 3, Washington, D. C.

Lee, Y. T. (1995). *Cross-cultural Studies of Descriptive and Prescriptive Beliefs in Justice*. Paper presented at the 24th Annual Conference of the Society for the Cross-Cultural Research, February, Savannah, Georgia.

Lee, Y. T. (1995) *Quantitative Analyses of Chinese Mainstream Psychology in the Past Nine Years.* Paper presented at the 66th Annual Conference of the Eastern Psychological Association, March 31-April 2, Boston, MA.

Lee, Y. T. & Hussain, I., (1995). *Cross-cultural Research on Mexican and American Response to Proposition 187.* Paper presented at the 7th Annual Conference of the Society for the Advancement of Socio-Economics, April 6-9, Washington, D.C.

Chen, C. C., Lee, Y. T., & Dou, S. (1995). *The Effect of Modernization on Chinese values: Further Research.* Paper presented at the 7th Annual Convention of the American Psychological Society, June 29-July 2, New York.

Lee, Y. T.& Kleinbach, R. (1995). *Social Judgments and Attitudes toward Geronticide and Infanticide: A Cross-Cultural Comparison.* Paper presented at the Joint Conference of the European Association of Experimental Social Psychology and the Society of Experimental Social Psychology. September 29-October 1. Washington, D.C.

Lee, Y. T., Sicard, B., Calo, C., & Fegreus, B. (1996). *An Experimental Study of the Impact of Self-Esteem and Threat on being Accurate.* Paper presented at the 67th Annual Conference of the Eastern Psychological Association, March 29-31, Philadelphia, PA.

Lee, Y. T. (1996). *Understanding Stereotype Accuracy is a Way to Appreciate Cultural Differences.* Paper presented at the XIIIth Congress of the International Association for Cross-Cultural Psychology, August, Montreal, Quebec, Canada.

Lee, Y. T., & Hussain, I. (1996). *Factor Analysis of U.S. Immigrant Policy: The Case of Proposition 187*. Paper presented at the XXVIth International Congress of Psychology, August, Montreal, Quebec, Canada.

Lee, Y. T. (1996). *Ichheiserian Stereotypes and Prejudices: Nothing is False like Mainstream Truth*. Paper presented at the Annual Conference of the Society for the Experimental Social Psychology at Sturbridge, October, Massachusetts.

Lee, Y. T. & Meyers, S. (1997). *Religious Identity and Perceived Problems in Interfaith Marriages*. Paper presented at the 68th Annual Conference of the Eastern Psychological Association, March 10-13, Philadelphia, PA.

Lee, Y. T. (1997). *Cultural Identity Beyond Social Structure and System*. Paper presented at the International Conference on the Transition to HKSARPRC, July 7-9. Hong Kong, China.

Lee, Y. T. (1998). *Stereotyping and Classroom Motivation in Different Cultural Settings*. Paper presented at the Cross-Cultural Conference on Educational Motivation and Social Cognition, May 20-25. Beijing, China.

Lee, Y. T. (1999). *Stereotypes, Communications and Modal Personalities of Americans and Chinese*, Paper presented at the 70th Annual Conference of the Eastern Psychological Association, April 16-18, Providence, Rhode Island.

Lee, Y. T. & Ottati, V. (1999). *Perceived Variability and Modality within and between Bounded Social Entities: A Multi-factorial Approach and Cultural Stereotype Accuracy*. Paper presented at the small group conference of international social

psychology at Catholic University at Lcvain la Neuve, July 3-7, Brussels, Belgium.

Lee, Y.T. Guo, D. J., & Shi, K. (1999). *Stereotypes and Categorical Information Processes as a Psychological Approach to International Business Training in Asian Cultures*. Paper presented at the 4th Asia Pacific Decision Sciences Institute Conference, June 10-12, Shanghai, China.

Lee, Y-T. (2000). *Does Cultural Diversity Training Serve as a Perception of Political Correctness or Result in Actual Corporate Growth?* Paper presented at the 28th Annual Conference of National Association for Ethnic Studies on March 25, 2000. Boston, Massachusetts.

Lee, Y-T. (2000). *The 1st Capital Needed for China in the 21st Century's Globalization: Rebuilding Chinese "Dao", "De Governance" and "Socio-Cultural/Psychological Spirit"*. Paper presented at the 5th Annual Conference by Western Returned Scholars Association, August 8-10, 2000, Beijing, China.

Lee, Y-T. (2000). *What if You Know You Have Long been Derogatorily Stereotyped/labeled as an -ese in your Cultural/Ethnic Identity?* Paper presented at the Annual Conference of the Association of Chinese Professors of Social Sciences (ACPSS) in the USA, October 27-29, Kennesaw State University, Atlanta, Georgia.

Lee, Y-T. (2001). *Humanistic Approaches to Ethnic Tolerance and Multicultural Differences Appreciation: What Classrooms and Society Can Learn from Ancient Taoism and Modern Stereotype Accuracy Theories?* Paper accepted to be presented

at the 29th Annual Conference of National Association for Ethnic Studies on March 31, 2001. New Orleans: Louisiana.

**BOOKS AND CHAPTERS**

Lee, Y. T. (1991). *Stereotypes, salience and threat: The determinants of perceived in-group homogeneity*. Ann Arbor, MI: UMI/A Bell & Howell Information Co.

Jussim, L., McCauley, C., & Lee, Y. T. (1995). Why study stereotype accuracy? In Y. T. Lee, L. Jussim, & C. McCauley (Eds.), *Stereotype accuracy: Toward appreciating group differences*. Washington, DC: The American psychological Association.

Lee, Y. T. & Duenas, G. (1995). Stereotype accuracy in multicultural business. In Y. T. Lee, L. Jussim, & C. McCauley (Eds.), *Stereotype accuracy: Toward appreciating group differences*. Washington, DC: The American psychological Association.

Lee, Y. T., Jussim, L. & McCauley, C. (Eds.). (1995). *Stereotype accuracy: Toward appreciating group differences*. Washington, DC: The American psychological Association.

McCauley, C., Jussim, L., & Lee, Y. T. (1995). The time is now: Stereotype accuracy and intergroup relations. In Y. T. Lee, L. Jussim, & C. McCauley (Eds.), *Stereotype accuracy: Toward appreciating group differences*. Washington, DC: The American psychological Association.

Ottati, V. & Lee, Y. T. (1995). Accuracy: A neglected component of stereotype research. In Y. T. Lee, L. Jussim, & C. McCauley (Eds.), *Stereotype accuracy: Toward appreciating group differences*.

Washington, DC: The American psychological Association.

Lee, Y.T. (1998). *A guide to teaching social psychology across cultures*. New York: W. H. Freeman.

Lee, Y. T., McCauley, C. R., & Draguns, J. (Eds.). (1999). *Personality and personality perception across cultures*. Mahwah, NJ: Lawrence Erlbaum Associates, Inc. Publishers.

Lee, Y. T., McCauley, C. R., & Draguns, J. (1999). Why study personality in culture? In Y. T. Lee, C. R. McCauley, and J. Draguns (Eds.), *Personality and person perception across cultures*. Mahwah, NJ: Lawrence Erlbaum Associates, Inc. Publishers.

McCauley, C. R., Ottati, V., & Lee, Y. T., (1999). Cultural differences in economic growth. In Y. T. Lee, C. R. McCauley, and J. Draguns (Eds.), *Personality and person perception across cultures*. Mahwah, NJ: Lawrence Erlbaum Associates, Inc. Publishers.

McCauley, C. R., Draguns, J. G. & Lee, Y. T., (1999). Person perception across cultures. In Y. T. Lee, C. R. McCauley, and J. Draguns (Eds.), *Personality and person perception across cultures*. Mahwah, NJ: Lawrence Erlbaum Associates, Inc. Publishers.

Zhang, K., Lee, Y. T., Liu, Y. F., & McCauley, C. R. (1999). Chinese-American differences: A Chinese view. In Y. T. Lee, C. R. McCauley, and J. Draguns (Eds.), *Personality and person perception across cultures*. Mahwah, NJ: Lawrence Erlbaum Associates, Inc. Publishers.

Lee, Y. T., Malloy, T., & Albright, L. (2000). Group stereotypes and social relations model: Toward

cross-cultural psychology. In U. P. Gielen and A. L. Comunian (Eds.) *Cross-Cultural and International Dimensions of Psychology*. Italy, Edizioni Lint Trieste Srl publisher.

## PUBLICATIONS IN REFEREED JOURNALS

Lee, Y. T. (1985). Psychology in development. *Journal of Scientific Methodology, 3*, 59-61 (in Chinese).

Lee, Y. T. (1986). Studying the relationship between impression management and administration. *Journal of Chinese Administrative Science, 4*, 12-14 (in Chinese).

Lee, Y. T. (1987). New trends in Western psychology. *Journal of Potential Sciences, 1*, 81-84 (in Chinese).

Lee, Y. T. & Wei, F. (1990). Chinese nationalism and social change. *The Chinese Intellectual* (refereed journal with English abstract), *20*, 39-44 (in Chinese).

Lee, Y. T. & Ottati, V., (1993). Determinants of ingroup and outgroup perception of heterogeneity: An investigation of Chinese-American stereotypes. *Journal of Cross-Cultural Psychology, 24*, 298-318.

Lee, Y. T. (1991). Small colleges and global perspectives. *Cross-Cultural Psychology Bulletin, 25*(4), 14-16.

Lee, Y. T. (1993). Ingroup preference and homogeneity among African American and Chinese American Students. *The Journal of Social Psychology, 133*(2), 225-235.

Lee, Y. T. (1993). Psychology needs no prejudice but the diversity of cultures. *American Psychologist, 48*, 1090-1091.

Lee, Y. T. (1993). Reactions of American minority and nonminority students to the Persian Gulf war. *The Journal of Social Psychology, 133*, 707-713.

Lee, Y. T. & Hu, P-C. (1993). The effect of Chinese Qi-gong exercises and therapy on diseases and health. *Journal of Indian Psychology, 11*, 9-18.

Lee, Y. T. (1993). Perceived homogeneity and familial loyalty between mainland Chinese and Americans. *Current Psychology, 12*, 260-267.

Lee, Y. T. (1993). Cultural sensitivity and psychological open-mindedness: Understanding ourselves in the global village. *Contemporary Psychology, 38*, 794-795

Lee, Y. T. (1994). Racial conflict in academic communities: An analysis of various forms of racism and prejudice. *IMPART: Journal of Open Mind, 2*, 78-86.

Lee, Y. T. (1994). Why does psychology have cultural limitations? *American Psychologist, 49*, 524-525.

Lee, Y. T. (1994). Stereotypes, ingroup homogeneity and social identity theory in intergroup contact and comparison. *Sociological Theory* (*Teoria Sociologica*), *3*, 162-175 (also translated into Italian).

Lee, Y. T. (1994). Individualism-collectivism: Avoiding the hammer-nail effect. *Cross-Cultural Psychology Bulletin, 28*, 15-17.

Lee, Y. T. & Ottati, V. (1995). Perceived group homogeneity as a function of group membership salience

and stereotype threats. *Personality and Social Psychology Bulletin 21*(6), 612-621.

Lee, Y. T. (1995) A comparison of politics and personality in China and in the U.S.: Testing a "kernal of truth" hypothesis. *The Journal of Contemporary China, 9*, 56-68.

Lee, Y. T. (1996). "Fundamental advances" in psychological globalization and revitalization. *World Psychology, 1*(4), 114-116.

Lee, Y. T. (1996). It is difference, not prejudice, that engenders intergroup tension: Revisiting Ichheiserian research. *American Psychologist 51*(3), 267-268.

Lee, Y. T., Kleinbach, R., Hu, P., Peng, Z. Z., & Chen, X. Y. (1996). Cross-cultural research on euthanasia and abortion. *The Journal of Social Issues*, 52 (2), 131-148.

Lee, Y. T. (1996). From West-centric civilization to an appreciation of global differences. *Cross-Cultural Psychology Bulletin, 30*(1), 21-32.

Lee, Y. T. & Seligman, M. E. P. (1997). Are Americans more optimistic than the Chinese? *Personality and Social Psychology Bulletin, 23*(1), 32-40.

Lee, Y. T., Pepitone, A., & Albright, L. (1997). Descriptive and Prescriptive Beliefs about Justice: A Sino-U.S. Comparison. *Cross-Cultural Research. 31*(2), 101-120.

Lee, Y-T. (2000). Attacking racism from a different perspective. [A book review on ASIAN VOOYAGE [sic]: TWO THOUSAND YEARS OF CONSTRUCTING THE OTHER BY O. R. Dathorne]. *International Journal of Group Tension, 29*, 210-212.

Lee, Y-T. (2000). What is missing in Chinese-Western dialectical reasoning? *American Psychologist, 55*, 1065-1067.

Lee, Y-T. Albright, L. & Malloy, T. (2001). Social perception and stereotyping: An interpersonal and intercultural approach. *International Journal of Group Tension* (in press).

Lee, Y. T. & Ottati, V (2002). Attitudes toward to American immigration policy: The role of ethnicity, prejudice, economic concern, and obedience to law. *Journal of Social Psychology* (in press).

## UNPUBLISHED MANUSCRIPTS

Lee, Y. T. & Ottati, V. (1999). *Perceived Stereotyping Variability and Modality within and between Bounded Social and Cultural Entities.*

Lee, Y. T. (1999). *Common Cultural Identity over Socio-political Differences between Hong Kong and China.*

Pepitone, A., L'Armand, K. Lee, Y. T., & Prachi. (2000). *Justice in Life Events: A Cross-Cultural Analysis* (under revision).

## GENERAL PUBLICATIONS

Lee, Y. T. (1989). Chinese people and society: Normal and abnormal personality. *Overseas Chinese Voice, 66*(1), 32-33 (in English and Chinese).

Lee, Y. T. (1990). Politics overpowers our human rights. *Statesman: Viewpoint*. State University of New York at Stony Brook.

Lee, Y. T. (April, 1992). Race and racism: Social identity and scientific policy. *The SPSSI Newsletter, 187*, 2.

Lee, Y. T. (1994). Conflict between stereotyped Blacks and powerful Whites: Western perceptions of Africa and Blacks. *Explorations in Sights and Sounds, 14*, 65-67.

Lee, Y. T. (April 27, 1996). What is most important and fundamental to Chinese people? *The China Press* (in Chinese).

Lee, Y. T. (May 18, 1996). What situations does China face? *The China Press*. (in Chinese).

## TRANSLATIONS

Fromm, E. (1956). *The Art of Loving*. New York: Harper-Row Publisher (Y. Lee, Trans., from English into Chinese, Beijing: Huaxia Publisher. 1986).

Bramel, D. & Friend, R. (1981). Hawthorne, the myth of the docile worker, and class bias in psychology. *American Psychologist, 36*(8), 867-878 (Y. Lee, Trans., from English version into Chinese. 1987).

## INVITED ADDRESSES

Lee, Y. T. (1993). *How do Chinese and Americans See Each Other?* Changsha Railway University, Changsha, Hunan, People's Republic of China.

Lee, Y. T. (1993). *Psychology in the USA: Its Pluses and Minuses*. Hunan University, Changsha, Hunan, People's Republic of China.

Lee, Y. T. (1994). *A Bridge between Personality and Culture*. St. Lawrence University, New York.

Lee, Y. T. (1995). *Optimism and Pessimism between Chinese and Americans*. Rhode Island College, Providence, Rhode Island.

Lee, Y. T. (1996). *A New Look at Stereotypes*. California State University, Los Angeles, California.

Lee, Y. T. (1996). *Stereotypes, Prejudices and Differences*. Brown University, Providence, Rhode Island.

Lee, Y. T. (1996). *Does a Difference Make a Difference in Stereotypes and Prejudices?*. University of Massachusetts at Amherst, Massachusetts.

Lee, Y. T. (1997). *Stereotyping and Moral/Ethic Values and Beliefs: A USA-China Comparison*. Department of Psychology, Hunan Teaching University, Changsha, Hunan, China.

Lee, Y. T. (1998). *Stereotypes and Diversity Training in Multicultural Business*. City University of New York (Baruch College), New York.

Lee, Y. T. (1998). *Stereotypes and Stereotyping in relation to Learning and Teaching*. Department of Education, Capital University in Beijing, China.

Lee, Y. T. (1999). *Applying Modal Personality and Stereotypes to Cross-cultural Business Training in Asia*. Division of Industrial and Applied Social Psychology, Institute of Psychology at the Chinese Academy of Sciences, Beijing, China.

Lee, Y-T. (2000). *American Psychology in the 20th Century: Strengths, Weaknesses and Directions*. Department of Psychology, Beijing Normal University, China.

## GRANTS HISTORY

*Teaching-Research Fellowship*, 6000.00. Direct cost for working on a book project on ethnic and cultural conflict around the world. Minnesota State University, Mankato, 2001.

*Cultural and Academic Grants for Campus Programs*, $3000.00, direct cost for inviting nationally distinguished speakers talking about multicultural and ethnic issues. Westfield State College of Massachusetts, 1999.

*Chun-Hui Foundation*, $5000.00, cost for collaborative research on social categorization, motivation and stereotypes (with scholars in China). Education office of Chinese Consulate in New York, 1997-1998.

*Chinese Teaching-Research Fellowship* for young scientists abroad, RMB $50,000, direct costs for international and domestic travel to conduct lectures and research in China. Chinese Academy of Sciences and Chinese Natural Sciences Foundation, Beijing, China, 1997.

*Science Directorate Grant* for Stereotype Accuracy Research, $10,000.00, direct costs for a scholarly conference and book, (with colleagues: Clark McCauley at Bryn Mawr and Lee Jussim at Rutgers), American Psychological Association, Washington, DC., 1993-1995.

*University Diversity and Activity Funds*, $2,000.00, State University of New York at Stony Brook, 1991.

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